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ABSTRACT

Volume 2, "Development Programs and Plans" and "The Resource Base," is part of a 2-volume compendium of study papers intended to serve as a resource document for members of the Joint Economic Committee, other members of Congress, and those who are concerned with formulating and executing effective policies of economic development for American Indian and Alaskan native communities. "The study addresses itself to the serious problems of poverty and economic insecurity found in native American communities and to the apparent inability of the Federal Government to provide effective assistance in improving the economic situations of American Indians and Alaskan native groups. The compendium contains papers by invited individual experts, statements by Federal agencies, and statements by native organizations." This document contains Parts II and III of the study. Part II, which contains statements by Federal agencies and by native organizations, provides program descriptions as well as various views of currently unmet needs and future directions. Part III discusses the resource base available to the American Indian. A related document is RC 005 587. (LS)

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TOWARD ECONOMIC DEVELOPMENT FOR NATIVE AMERICAN COMMUNITIES

A COMPENDIUM OF PAPERS

SUBMITTED TO THE

SUBCOMMITTEE ON ECONOMY IN GOVERNMENT

OF THE

JOINT ECONOMIC COMMITTEE
CONGRESS OF THE UNITED STATES

Volume 2

Part II: DEVELOPMENT PROGRAMS AND PLANS
Part III: THE RESOURCE BASE

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Toward Economic Development for Native American Communities

Part II: DEVELOPMENT PROGRAMS AND PLANS

ECONOMIC DEVELOPMENT OF INDIAN COMMUNITIES

By Bureau of Indian Affairs: U.S. Department of the Interior

FOREWORD

The Bureau of Indian Affairs is the Federal agency having the primary responsibility for Indian programs. In this statement, the BIA describes the economic and social conditions found on Indian reservations, pointing out the ways in which the Indians are in a unique situation, requiring unique policies of development assistance. The statement describes the present programs of the BIA and of other Government agencies and suggests some future policy needs.

I. National Policy for Distinctive Communities

The economic development of American Indian communities on the lands held in trust by the Secretary of the Interior, is encouraged and advanced by programs of the communities themselves and of the Bureau of Indian Affairs. Bureau programs, increasingly supportive, rather than directive in nature, are designed to enable the Indians to realize their full potential as citizens of the United States. Realization of this potential—economic, political, social, and cultural—is recognized by the Bureau and the Department of the Interior as a goal of national policy. This goal received support from President Johnson in his Message on Indian Opportunity, of March 6, 1968, and from President Nixon, as a candidate, in his statement of September 27, 1968, concerning American Indians.

The programs of the Bureau of Indian Affairs are authorized and funded by Congress for the benefit of all Indians, living on or near trust land. In the administration of these programs, however, the Bureau must take into account both the differences to be found between typical Indian communities and non-Indian America and the significant differences that exist among Indian communities themselves. Otherwise, program resources would not be applied as effectively as possible to the achievement of these policy goals.

POVERTY: CONDITIONS AND CONSEQUENCES

Most Indian families live in varying degrees of poverty that stem from varied sources—cultural differences from the non-Indian society, lack of educational opportunities, and lack of development of reservation-based resources. These handicaps are aggravated by geographical isolation from the rest of society and a set of values, that has been characterized as "an intense attachment to native soil, a reverent disposition toward habitat and ancestral ways, and a restraint on individual self-seekings in favor of family and community." The Federal Government holds title, in trust for Indians, to approximately 40-million acres of tribally owned land and 11-million acres of individually owned land. Possession of land gives Indians a sense of security, not necessarily related to its present or prospective economic contribution. This phychological fact, which has its counterpart in some non-Indian depressed areas, helps explain why Indians often choose to remain on land which currently offers limited economic support.

Education.—Indian people, in general, have not been well educated. The educational level among adults is only two-thirds that of other Americans. Indians must overcome severe handicaps to secure the education demanded by today's sophisticated and specialized society.

Indian children start to school with handicaps springing from a different culture, poverty, and physical isolation. The evidence is disorganized families, low levels of education among parents and in the community, few books or newspapers in the home, meager modern facilities, and a general isolation from the larger world brought about by poor roads and communication.

Beyond these handicaps, which are common to rural poverty areas, the Indian child has unique problems of cultural isolation. He must learn to bridge two cultures—the ancient, satisfying, Indian heritage, and the customs of the majority of our society. Indian values differ markedly from those typical of the white majority. Individual excellence in classroom achievement, for example, may run counter to the Indian ideal of group solidarity and cooperation. Indians revere the traditions of the past, are reluctant to accept new customs, and resist change. An additional problem of adjustment for many Indians is learning English as a second language. Symptoms of strain under cultural conflict are apathy, feelings of powerlessness, avoidance of non-Indian contact, substandard educational achievement, expectation of failure, and a high dropout rate from school.

Lack of Resource Development.—Indian people suffer from unemployment and inadequate income, as a result of lack of resources, both natural and human, or their underdevelopment. A shortage in the quantity and quality of skills exists on many reservations. As a result, widespread unemployment (10 times and more the national average) is typical. Underemployment is extensive, with many workers in low-paying and seasonal jobs.

Deficiency of Resources.—Many Indian people living on reservations occupy poor, barren land, lacking exploitable resources. Other reservations, while rich in resources, are overpopulated. Resident Indian population growth exceeds the Nation's average. When combined with inadequate natural resources and an inadequately skilled labor force, the growing population compounds a severe economic problem for the Indian people.

Inadequate Credit.—This problem is further compounded by a lack of credit, which limits investment both in economic ventures and in social overhead capital. Indian people, unaccustomed to ordinary business practices and lacking in management or technical training, have great difficulty in obtaining credit. Protective devices placed around Indians, such as their inability to sue or be sued, and the lack of authority for tribes to use land, their main asset, as security, sometimes makes it impractical for lenders to provide financing.

Fractionated Ownership of Land.—Heirship procedures on allotted Indian lands have created highly fractionated ownership, which hampers their efficient use for various business ventures or agriculture. Multiple ownership makes the consolidation of Indian-owned lands for productive use difficult and in many cases impossible.

Physical Isolation.—The physical isolation of many Indians living on reservations also handicaps economic growth. Typically isolated from central labor and consumer markets, Indians have fewer job opportunities and must pay high prices for consumer goods. Poor transportation facilities, air, rail, and highway, have discouraged many concerns otherwise interested in establishing industries. Indian communities generally have fewer roads per square mile of territory than surrounding States and many roads on reservations cannot be used in bad weather. School days are missed and social contacts held back to an extent not typical of the rest of society.

A cumulative result of extended unemployment is the lack of work experience. This disadvantage is manifest in a large number of dropouts from employment training programs and from apprentice-type jobs. When coupled with the cultural isolation, the lack of work habits and experience becomes a primary limiting factor in achieving continuous employment for individuals.

Housing.—A recent survey indicated that only one out of four Indian families was adequately housed. Approximately 19,000 families live in homes that can be brought up to acceptable standards by renovation, and 49,000 families must have new housing. Low income, high unemployment, and physical isolation have limited the Indians' participation in normal channels that provide long-term mortgage capital.

Health Problems.—The health level of the Indian is the lowest of any major population group in the United States. It is evidenced by a high infant mortality rate, 34.5 per 1,000 births, 12 points worse than the national average. A high incidence of pneumonia, viral infections, and malnutrition is common among Indian children. Tuberculosis among Indians and Alaska natives is more than five times as common as the national average. Alcoholism is a major problem and becoming more prevalent. More than half of the Indians obtain water from contaminated or potentially dangerous sources, and waste disposal facilities are grossly inadequate.

The foregoing are quantifiable differences that are characteristic of the residents of Indian communities. They have their roots in the basic cultural differences that have led to such serious divergence between these communities and their non-Indian neighbors. Cultural differences are deep and lasting; they yield only slowly to the influence of the surrounding culture. Indian economic development can proceed only as the process of acculturation allows. Following are three illustrations of older culture concepts found among most Indian tribes and Alaska natives which still influence economic development.

Material wealth does not embody the same values or have the same attraction for the native cultures as in present-day American culture. Prestige is acquired primarily by other means; therefore, the promise of payrolls and other forms of material reward often does not provide the motivation needed to encourage economic growth.

Social pressures discourage acquisitions of material goods. Thus, demands of the family will not infrequently discourage individual initiative, particularly where family obligations range over a wide network of persons.

A preference for leisure (that is, for contemplative time) is evident among most native cultures. Time is measured in hours and seasons, not in sweeps of the second hand. The desire for time to contemplate need not be hostile to the desire for economic progress, but can strongly influence the direction and pace of economic change and the view as to what directions constitute wholesome economic change.

The differences, both visible and underlying, between Indians and non-Indians are marked and significant. These differences are manifest in the social and cultural patterns of the Indian community. It is a collective, cooperative system, as contrasted with the competitive, individualistic system of non-Indian communities. Yet, despite these common characteristics distinguishing them from non-Indian society, there are also many difference among Indian communities, differences that are significant for their attitudes toward and capability of economic development.

VARIED TYPES OF INDIAN COMMUNITIES

Essential for an overview of the problems faced in economic development of Indian communities is recognition of the vast range of reservation community types—their varying sizes of population and land area, their differening degrees of cultural or geographic isolation from the larger national community, and the enormous differences in the quality, quantity, and strategic location of resources.

There are 270 Indian "reservations" in the "lower 48" States. Another 24 trust reserves, along with 100 federally owned land areas, have been set aside for Indians, Eskimos, and Aleuts in Alaska. These range in size from the 14-million acre Navajo Reservation, upon which 100,000 Indian people live, to single-acre California "rancherias" with no resident populations. Some, as is true of most of the Alaskan areas, are distant from larger communities and further cut off from them by the most tenuous systems of transportation and communications. Others, as in the instance of certain of the Nevada colonies, some of the reservations in Washington, Arizona, New Mexico, Michigan, Wisconsin, New York, and the Indian area of western Oklahoma, are contiguous to or surrounded areas already urban or becoming urbanized.

In still other locations, notably where reservations were allotted to individuals (before this practice was curtailed by law in the early 1930's), much Indian land has been alienated to non-Indians, who outnumber Indians many times over within the external boundaries of the old reservations. For example, on the Flathead Reservation in Montana, where considerable economic development activities on behalf of Indians have taken place, whites outnumber Indians roughly 10 to 1. The same holds true on the Sisseton Reservation in North and South Dakota, where only 10 percent of the old reserve remains in ownership by the Indians. On the South Dakota Pine Ridge and Rosebud Sioux Reservations, with aggregate Indian populations in excess of 10,000, less than 50 percent of the land remains in Indian hands. Much of the economic control in the areas is by whites or by so-called "mixed bloods" who in some instances maintain only the most nominal sort of tribal identities.

Of 129 reservation areas with populations of at least 200 Indian people and with at least 1,000 acres of land base, 25 have greater non-Indian than Indian population within their original boundaries, 45 are adjacent to or in close proximity to urban areas, and 38 have lost 50 percent or more of their original reservation area to non-Indians. These figures do not include the situation in Oklahoma, where land alienation and residence in close proximity to larger non-Indian populations is the rule.

Also of importance in seeking a direction for reservation economic development is an awareness of the rather significant mobility of many reservation Indian populations. At present, roughly one-third of all Indians, most of them recently from the reservations, no longer live in their home communities. Many now live in the larger urban areas of the west coast, the upper Midwest, or in the Southwest—particularly in Oklahoma and Texas. By far the largest off-reservation population is in Los Angeles County, where between 30,000 and 40,000 Indians, especially Sioux, Navajo, and native Oklahomans presently live. Less than half have moved there with the Bureau's assistance, although its assistance program has undoubtedly been influential in attracting nonparticipants to the urban areas. The influence of these urban Indian colonies in attracting others from the rural areas is only beginning to be appreciated; some observers expect that 1970, the decennial census year, will see for the first time in history more American Indians living and earning their living in small towns and urban areas than on their home reservations.

The relevance of these differences among Indian communities to the subject under discussion lies in the fact that much of what we have learned about economic development is derived from experience in typical American communities. If Indian communities represent a generally different type, then any assumptions based on general American experience must be open to reexamination. And the significant differences among Indian communities constitute clear warning that each case must be considered on its own terms, with minimum assumptions concerning what factors are controlling. In short, none of the usual assumptions for economic development may be taken as automatically valid when we come to deal with the requirements of Indian economic development.

Skepticism here is reinforced by experience with similar development situations overseas. An eminent American economist, with long experience in the field, asserts, "not as an hypothesis, but as an empirical fact" that:

> To adapt almost any technique (even the spade, to replace the digging hoe) so that it will work well in a society with a quite different social and cultural complex and quite different personalities requires a very high degree of creativity.[1]

If spade instead of digging hoe, what of time-clock instead of the four seasons?

POLICY CHANGES AFFECTING INDIAN RESOURCES

Current programs of economic development made available to Indian communities by the Bureau and other public agencies do not yet reflect full practical recognition of the differences that have been identified in the preceding paragraphs. Some beginning has been made, however, from a starting point years ago that was essentially nondevelopmental in attitude and policy. Three significant changes are worth discussion.

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[1] E. E. Hagen, "What we do not know about the economics of development in low income societies," in *The Teaching of Development Economics*, Aldine, Chicago, 1967, p. 56.

For many decades the Secretary's trust responsibility for Indian lands was carried out essentially in terms of custodianship rather than of stewardship—of protection against loss rather as of responsible use for maximum Indian welfare and advancement. In recent decades, the Bureau has increasingly recognized an obligation to work with the Indians, not only in preventing deterioration of the physical resources of their lands, but also in bringing them up to optimum use and return. A successful claims action brought by a Wisconsin tribe whose forest had been poorly managed may have been the precipitating factor in this change of policy.

A second change relates to recognition of the resources of each Indian community as constituting an organic whole, not as a collection of range land, farm land, and forest land, each to be managed as though it stood alone. Recognition of a community's resources as a single complex has been promoted by the third significant change in approach, which is that of shifting emphasis from the Bureau to the Indians themselves.

This third change in policy has entailed the involvement of Federal agencies other than the Bureau of Indian Affairs and the Public Health Service in Indian programs and has had far broader impact than on resource use. Under this emphasis Indian communities have been enabled and encouraged to take full advantage of all Federal programs, not only those historically the responsibility of the Bureau of Indian Affairs and of the Indian Health Service in the Department of Health, Education, and Welfare, but those also of such agencies as the Economic Development Administration, Office of Economic Opportunity, Housing Assistance Administration, and Manpower Administration.

Reflecting these changes in attitude and policy toward Indian resources and the role of Indian communities in resource development have been at least two other alterations of Federal policy that are important for economic development. These affect education of Indians, both as children and as young adults, and the Indian community as a social organism requiring attention and development.

EDUCATION AND ECONOMIC DEVELOPMENT

Federal schools for Indian children have existed for nearly 100 years and in recent decades education has accounted for more than half of the Bureau's annual budget. The purpose of Indian education varied during the early years. One Secretary of the Interior explained its objective as being to "civilize" the Indians by training them for farming, homemaking, and the trades. Evidence of this narrow attitude is still found today among the influences brought to bear on our school programs and funding. Once there had been a persistent effort to de-Indianize the Indian child who attended a Federal school, particularly a boarding school. He was forbidden to use his native tongue and the classroom instruction, including such vocational emphasis as was found appropriate, followed lines and used textbooks originally designed for non-Indian children. Indeed, "Dick and Jane" primers continued in use down to only a few years ago.

There was a brief period, about 30 years ago, when the emphasis was markedly changed. The native tongue was encouraged and in some cases was used in the classroom. Primers told stories about Indians and were illustrated to show them in their native environment. Indian crafts were drawn upon for teaching materials and Indian lore was taught in the context of science and history studies. Vocational education was oriented to the needs of the community, as, for example, the unprecedented seafaring and commercial fishing training once offered at Wrangell Institute in Alaska.

This period was soon brought to an end by the criticism, from Indians as well as non-Indians, that the Bureau was attempting to keep the Indians as blanket Indians. It is only during the past few years that this ground has again been broken, Indian materials have again been introduced in the Bureau schools, and it has been recognized that English must be taught children as a second language. During the past year, for the first time, the Bureau has been able to open kindergartens, so that Indian children may avoid the lag in educational achievement that in the past has typically opened up during early years of schooling between them and non-Indian pupils. Support is also being given public school systems, which account for two-thirds of total Indian enrollment, for the introduction of kindergartens.

These are improvements, undertaken as essential for the education of the Indian child as a member of a community and of a culture, that also increase his capability as an adult to adapt himself to the economic requirements and opportunities of the Indian community and thus also of whatever other community he may later join. It is only in recent years that this basic contribution of education to the processes of community development, including its economic aspects, has been made.

ADULT VOCATIONAL TRAINING

Alongside the schooling of Indian children, including opportunities for vocational training, there has been introduced, beginning in 1956, adult vocational training, for Indians of ages 18–35. Such training was originally designed to make up for the deficiencies of the Bureau's program to assist Indians in finding employment in distant urban centers, relocating families who were willing to try their luck away from the Indian community. Adult vocational training continues to be focused primarily on such workers and their families. For some years, however, it has included on-the-job training for Indians employed at plants located on or near the community under the Bureau's industrial development program, which is discussed below. Moreover, the early emphasis upon relocating the Indian family at as great a distance as possible from its home community, has been ended. Vocational training now enables Indians to prepare for work wherever it may be found. The result is that a growing number find employment near enough their home community as never to lose their sense of identification with it or their availability to participate in its affairs and responsibilities. The AVT program, while continuing to open the way for the ambitious Indian wishing to join the outside world also helps strengthen the Indian community by enabling others to improve their incomes without abandoning their relatives and homeland.

The relationship of these policy and program elements to economic development may be judged in light of experience. This indicates that

Indian youth who keep up with school requirements and thereby complete high school satisfactorily, and who thereafter complete an AVT course, are exceptionally successful in finding and holding good jobs at good wages. To the extent they do so near the home community, the community is strengthened. To the extent they do so at a distance, the community benefits psychologically from the increasing demonstration that Indians who genuinely undertake to do so are fully capable of successfully competing in the non-Indian society.

COMMUNITY DEVELOPMENT

Community development, as recognized by the Bureau, is less a program in itself than a philosophy affecting all Bureau programs. Other Federal agencies—notably the Office of Economic Opportunity and the Economic Development Administration—are similarly groping toward the encouragement and support of constructive community effort among the Indian people. Results thus far are very encouraging. The nature and extent of participation by community members in the shaping and execution of development programs varies widely. In many communities such participation is still disappointingly low. The examples that follow are drawn from the many others, where the Indian people are learning to accept responsibility rather than to look to the Bureau for answers. In community after community, it is the Indian people themselves who decide what the programs shall be.

Navajo Experience.—We may begin with the Navajo, largest tribe of all, numbering about 100,000 members on the reservation. Here the shift of Bureau programs from custodianship to development has been accompanied by a change in the Bureau's role to that of technical adviser, real direction being provided by the Navajo themselves. The Navajo have become more than participants—they are innovators and leaders. Mistakes are made, recognized, and dealt with. Successes are frequent and rewarding, leading the way to further development.

Today, nearly all Federal schools on the Navajo Reservation are advised by local school boards. They make suggestions for goals and programs and assist in solution of problems. A listing of the accomplishments of these groups would be almost endless—setting up parental visitation schedules, arranging for discussions on scheduling, talking through the need for and importance of report cards, appearing in school assembly programs, trying to find solutions to the problem of absenteeism. Representatives from the boards have joined together at agency level to discuss common problems. These ventures are strengthened both by encouragement and guidance of the Bureau staff and by the Tribal Education Committee, an arm of the Navajo Tribal Council. The committee meets jointly on a regular basis with Bureau Education Staff, sharing ideas and programs. It conducts an annual enrollment drive to be certain that all Navajo children are in school. A recent major decision, accepted by the Bureau, was that new boarding school construction should be halted in favor of a master road system. Such a move would provide means for more children to attend on a day basis rather than living in boarding schools.

For many years the Navajo Tribe has recognized the industrial potential of the reservation. In order to conserve their vast timber resources they developed a commercial sawmill which was the forerunner of the present Navajo Forest Products Industries. This wholly owned tribal enterprise is directed by a Management Board of nine members, including five Navajo. Assets of the industry exceed $12 million. The Board is responsible for all aspects of the operation—mill management, capital expansion, and townsite development. More than nine out of 10 of the 500 employees are Navajo. A second venture of the tribe, along the same organizational pattern, is the Navajo Tribal Utility Authority. Assets of this facility now exceed $20 million and the present staff numbers nearly 200, only a few being non-Navajo.

Meeting employment needs of the Navajo people in the expanding economy has largely been an activity of the tribal relocation and placement committee, the personnel department, the apprenticeship coordinator, and an interagency committee on migrant labor. Although industrialization and urbanization have brought new jobs to the reservation, and local on-the-job training has increased tremendously, many Navajo people continue to move elsewhere for the types of employment they seek. At the same time, an adult education program is supplementing cooperative Bureau and tribal efforts to provide basic education needs for a growing labor force. It almost goes without saying that the adult education courses are designed to meet local demands, such as basic skills, driver education, and community living. Such efforts prepare people to adjust to the many new living situations being created both on and off the reservation.

The Navajo people are expressing themselves through all channels of government, both tribal and Federal, but a most important ingredient has been added with the implementation of the community development program. While it began as a Bureau program, the Navajo people accepted it, from the first seminar, as their own, naming a tribal community development committee and local committee at each agency. By July 1969, community development seminars, planned largely by Navajo people, will have been held at each of the five agencies. Suggestions from the completed seminars are already being incorporated in existing programs. Full impact of these new voices of the people will be felt in the new Navajo way of life.

Billings area.—In another jurisdiction, that of our Billings area office, tribal housing authorities have been established on all reservations. The membership of these authorities is predominantly tribal, but also includes local non-Indians. All housing authorities in this area have assumed primary responsibility for the conduct of the housing programs financed by the Housing Assistance Administration, Department of Housing and Urban Development. On several reservations the Bureau's housing improvement program, HIP, has been contracted to the housing authorities. We are moving in the direction of contracting with housing authorities also for the employment of housing construction representatives, which heretofore have been Federal employees. Thus, on a number of reservations in this area the tribes have taken over almost complete management of the construction and rehabilitation of Indian housing.

On Crow, Northern Cheyenne, Blackfeet, and Fort Peck Reservations, the tribes have been very active in the planning and implementing of industrial development. Perhaps the best illustration is the Crow Industrial Development Commission, which was created at the time the tribe received $10 million of judgment funds. This commission was given full responsibility for the use of $1 million of tribal funds dedicated for industrial development. This commission has not been a rubberstamp organization, but has actually assumed full manage responsibility for the program, with Bureau employees serving only as technical advisors.

The commission's first accomplishment, establishment of a manufacturing plant, proved abortive when the company failed, but the tribe and commission have persisted, with encouraging results. The Big Horn Carpet Co., after initial difficulties leading to a change of management, is operating satisfactorily, with prospect that employment may eventually reach 400 rather than the earlier target of 100. In recent months, the Crow Industries Feed Mill has been established with tribal participation; it also appears solidly grounded, though offering less employment potential.

Warm Springs.—In the Pacific Northwest, the Confederated Tribes of Warm Springs, Oreg., provide a case study, perhaps a model, for Indian comprehensive planning through their experiences in active participation in such planning during the past 3 years. Nowhere among the tribes of the Northwest is there an equivalent example of direct Indian control and participation in developmental planning.

For many years, the Warm Springs Tribes have made steady progress in the general area of economic development, but it was not until mid-1967 that they embarked upon a truly integrated comprehensive planning program. Prior to mid-1967, a variety of planning reports, feasibility studies, basic data compilations, and the like had been developed by the tribes through various means. These included both tribally funded and Bureau-funded studies, both tribally conceived and Bureau-conceived studies.

The Warm Springs Tribes were, in effect, trailbreakers in the Northwest in comprehensive planning for Indian tribes, and the path was not always easy. From the time of the resolution (1963) to the date of the actual application to the Department of Housing and Urban Development (DHUD), some 4 years elapsed during which laborious steps were taken and severe obstacles overcome. Probably the most difficult and time-consuming effort was devoted to the establishment of a tribal planning committee and that committee's subsequent development of statements of tribal objectives and goals. These statements served to clarify and make more concrete in the minds of the planning committee and the tribal council both what problems were to be faced and, essentially, what kind of reservation and communities the Warm Springs people wanted for themselves and their children in the coming years.

Among other obstacles that were overcome during this period were the need for modification of existing Federal legislation to make Indian tribes eligible for planning assistance under section 701 of the Housing Act of 1954 and the lack in Oregon of enabling legislation that would allow the State planning agency to contract with DHUD on behalf of Indian tribes in Oregon. During this period, however, the tribes and the Bureau worked with the State planning agency to develop a planning program that met State and DHUD requirements and, at the same time, came as near as possible to meeting tribal goals and objectives.

Perhaps the most significant aspect of the Warm Springs planning saga was the control and participation exercised by the tribes along each step of the way. The tribes set the operation in motion, objectives and goals were established by the tribes, enabling legislation was introduced at the specific request of the tribes, and a consulting firm to assist in planning was selected by the tribes. As of March 1969, the first phase of the comprehensive plan was nearing completion and the entire effort continued to revolve around tribal control and participation.

II. Community Progress and Broadened Federal Programs

As a result of many factors, specifically including the community efforts of the Indian people themselves, their lag in achievement behind national norms has been reduced in recent years. The current lag continues, however, to present difficulties for economic development. These require special program efforts and a high degree of interagency cooperation to maximize Indian opportunities, capability, and participation.

A most encouraging aspect is the continuing improvement in education. In 1960 such improvement was manifest in the fact that 73 percent of young adult Indians, ages 20 to 24, had completed eighth grade, as compared with only 51 percent for Indians aged 25 and over. Similarly, 30 percent of the young adults had completed high school, compared to only 9 percent for the older population. The 1970 census of population will unquestionably disclose continued progress; we already know that secondary school enrollment of Indians increased, as a percentage of the secondary-school-age population, from 47 percent in 1960 to 69 percent in 1967.

The improvement in education is reflected in the increasing social and political responsibilities exemplified in the community situations described in preceding pages. In a crucial aspect, however, Indian progress remains disappointingly slow, that of income. Although Indian incomes have risen in recent years, there has been no lessening of the gap between them and those typical of the United States. Thus, it is estimated that in 1967 per capita income of Indians in the Bureau's service population was somewhat less than $850, to be compared with the United States average of $3,159 and of $1,896 for the State having the lowest average (Mississippi). Put in the more familiar terms of family income, the Bureau estimates that 75 percent of the families in Indian communities have incomes below $3,000, which is one of the poverty benchmarks. The official U.S. poverty percentage, 24 in 1959, had declined to 16 by 1967.

The great and continuing lack that accounts for substantially lower incomes in the Indian communities is that of wage employment; no prospective improvement in the management of resources or employment of Indians in resource use can yield the equivalent of the absorption of the idle reservation labor force (running to 40 percent and more) through such employment at standard wage rates.

CHARACTERISTICS OF THE RESERVATION LABOR FORCE

Wage employment on the reservations, or sufficiently nearby to permit commuting, requires both job opportunities and employable skills. Both are in short supply. This is especially true of employable skills when account is taken of typical Indian disinclination to con-form to the daily regimen required by modern factory production; possession of a skill is not enough to make it truly employable. It is important also to recognize that industrial employment is in continuing competition with other payroll opportunities.

The most significant source of income to Indians on virtually all of the larger reservations is employment with the Bureau of Indian Affairs and the Indian Health Service. Not only are most permanent nonskilled or semiskilled agency jobs filled by local Indian people (bus drivers, school support staff, hospital support staffs, maintenance workers, road crews, and a variety of professional aids, etc.) but each year many part-time employees are hired for special construction projects, forest fire suppression, et ceteria. Usually more than half of all Federal employees, although by no means the best paid employees, of the major Federal agencies are recruited from local community members.

Since 1963, first with Area Redevelopment Administration projects, and more recently through local employment opportunities funded by OEO, EDA, and other agencies, the number of intermittent jobs for reservation Indians has expanded dramatically. On the Navajo Reservation, for example, almost 4,000 Indian people, mostly Navajo, work for the Bureau of Indian Affairs; another 650 are employed by the Indian Health Service; and more than 2,900 jobs have been funded for Navajos under the CAP programs sponsored by the Office of Navajo Economic Opportunity. A total of 2,250 are employed by the Navajo Tribe itself—an aggregate of more than 9,000 tribal or Federally funded jobs. (Not included in these figures are those Navajo employed for shorter periods in the Neighborhood Youth Corps activities, in work training programs under title V, or in other sorts of training activities for which subsistence is paid.)

The varied activities alluded to above are far more under the control of the Indian employees than may appear on the surface. Indian concepts about time, production standards, attitudes toward absenteeism—all tend to prevail. This logically derives from the fact that none of these activities produces a product against which production standards can be measured realistically and that supervisory performance in large measure is evaluated against employee satisfaction.

"*Income Maintenance.*"—A second factor which must be evaluated in considering industrial development activities derives from the *de facto* program of income maintenance that is inherent in the reservation system. The mass of indian unemployed or underemployed have minimal but nonetheless very real income subsidies, which have developed gradually and which have been pretty much integrated into the cultural life of the group. Most Indians pay no rent on their inadequate homes, nor are taxes paid on the trust land they own. Comprehensive medical services are available, as is virtually free education for Indian children. In the instance of children from the poorest of Indian families, and for those from broken or disrupted homes, Federal boarding schools further stretch limited cash income.

Thus, welfare payments, to which no significant social stigma is attached, permanent or intermittent work or training activities funded by various Federal agencies, and seasonal or casual labor in agriculture, forestry, or whatever unskilled jobs are available in the community area, are the economic "knowns" against which industrial employment must compete.

Indian Sharing.—Another factor that has an unknown effect on the sorts of economic reorientation that industrial employment implies, derives from our almost total ignorance about how incomes from multiple sources are allocated and distributed to the members of an Indian nuclear or an extended family. That Indians share what they have with relatives is widely accepted; we need to know more about how. A hypothetical Indian extended family, not necessarily living under one roof, might be composed of parents, sons and daughters with children of their own, as well as minor children. Between them they have a BIA bus driver's salary, some income allotted from farm lands leased to non-Indians, seasonal income from agricultural labor, two aid-to-dependent children allotments, some limited income from the sale of cattle, as well as intermittent wages from a local CAP program funded by the Office of Economic Opportunity. We have no idea how far this income from all such varied sources goes toward meeting the felt economic needs of this family; we have no objective basis for assuming that the "unemployed" members of this not atypical reservation family will be drawn to industrial jobs, should they become available.

Social disorganization, with accompanying manifestations such as drinking, broken homes, fatherless children, etc., are the rule rather than the exception in many Indian communities. In this social environment, women not uncommonly are the active family heads, and as such, provide a better potential for developing a work force, than do Indian men. Indian men with a long history of unemployment, or of intermittent or casual labor, seem to treat the prospects of steady employment with considerable trepidation. Typically, they fear that they cannot handle the job, often hiding their fear behind a good deal of bluster and rationalization that the job is "woman's work"; that it lacks status, etc.

Indian men, of the sort referred to above, must be supported by a good deal more "training," to make them competitive, industrial employees than simply teaching them the vocational skills associated with the job itself. Assisting socially and psychologically handicapped persons permanently to join an industrial work force, whether they be from an urban ghetto or a rural reservation, is both complex and expensive. To reject the hard-to-employ leaves unsolved major social problems; too often this happens in attracting industry to a reservation or to an area near a reservation.

There is wide agreement that many reservation Indians view open-air jobs, in which they can work with other Indians in large groups, under easy-going supervision, without too much attention paid to absenteeism or tardiness, as offering ideal working conditions. The Indian Division of the Civilian Conservation Corps, provided jobs of this sort in the 1930's and early 1940's; this period is looked back upon by many Indians as the high point in their work experience. The widespread employment of many Indians in the wartime economy in no small way, resulted from the job-conditioning gained in CCC work. That this sort of activity remains popular with Indians was clearly established in the early 1960's when CCC-type activities were briefly reintroduced in the Accelerated Public Works Program under ARA. Administrators on many reservations where these activities were initiated, reported that Indian men lined up, many bringing their own axes or other tools, well ahead of the announced hour. In addition, many others who had left the community, including some who had been employed steadily for some time, returned to the reservation to join APW labor gangs.

It is safe to generalize, that Indian workers tend to prefer comfortable and satisfying employment at a lesser wage to a high income derived from less satisfactory working conditions. Thus, in more than a few instances, employment in newly established reservation factories, has been seen as interim employment until such time as BIA, OEO, or tribal jobs become available.

OVERCOMING GEOGRAPHIC ISOLATION

Despite the relative isolation of most Indian communities, there are many lines of production that today can realistically consider establishment of plants on or near reservations. However, difficulties of two types must be faced. On the one hand, small plants, reasonably geared to the size of the reservation labor force, are likely to be characterized by marginal management and shaky financing. On the other, companies that are well managed, are likely to be of such size that even a single plant may dominate the Indian community, involving serious disadvantages, at least until adjustments can be made, that tend to offset the advantages of employment and income. With the steady expansion of the Bureau's industrial development program (see part III, below), it has proved possible to protect Indian tribes and communities against the riskier opportunities offered to them. And to date, only one example of the second type of problem has arisen to require community adjustment to the wholly new problem of major expansion of job opportunities.

It is the high value and low bulk of a wide range of products, characteristics that permit reliance on air transportation, that explains the increased feasibility of establishing plants on the reservations. Equally important, the Bureau has had substantial success in on-the-job training of reservation residents for employment in nearby plants. Under most circumstances, indeed, it is such training that provides the final inducement to the manufacturer to locate in or near an Indian community.

PROGRAMS OF OTHER FEDERAL AGENCIES

Economic development of Indian communities has been supported since 1962 by other Federal agencies, beginning that year with the Area Redevelopment Administration, predecessor of the Economic Development Administration, in the Department of Commerce. For the first time, a non-Indian program was made available to Indian communities. In the following year, legal difficulties that for 25 years had barred construction of public housing on Indian trust lands, were overcome and this non-Indian program also was opened up to Indian communities. Such programs have not only been important in themselves—substandard housing in particular being a major adverse social, educational, and economic factor—but have benefited the Indians by altering the setting in which they now participate in programs of the Federal Government and other public agencies and deal generally with the "outside world."

The public resources devoted to the development of Indian communities have been substantially expanded by the contributions of the major agencies already identified and by lesser programs of the Department of Agriculture, the Department of Health, Education, and Welfare, and the Small Business Administration.

American Indians, though this is less true of tribal members than of leaders, have come to recognize, that their communities now have access to many programs other than those of the Bureau and the Indian Health Service. The introduction of new and supplementary programs has helped both the Indians and the Bureau move away from the patronage-dependency relationship that for decades held progress to an intolerably slow pace.

Although the Indians' reliance on Federal support is as great as ever, they no longer equate the Bureau with the entire Government and they are learning to approach the Bureau as well as other agencies on terms similar to those characteristic of other groups in their dealings with government. In the process, they are discovering more and more that they can do for themselves. The Bureau, for its part, is benefiting from demonstration that adequate and flexible funding can transform programs, that Indians can be given responsibilities comparable to those of other American groups, and that Indian efforts that cannot be reinforced through traditional programs may receive necessary assistance through new ones.

INTERAGENCY COORDINATION

The rapid expansion of programs available for Indian community and economic development poses matters of coordination of such programs and of the efforts of all parties to assure their effective operation. Coordination has several aspects, of which three have thus far been recognized and acted upon.

The core of program coordination must be handled on the reservation and by the Indian tribal council or other responsible body that speaks for the community. This is not only the logical focus, but without it programs would continue to be for the Indians rather than by the community and could hardly be expected to succeed over time. Such a core responsibility, moreover, conforms completely with the preference of all agencies for dealing directly with the tribe; it does not preclude the tribe from seeking advice and counsel from familiar quarters. The Bureau has stressed both the tribe's role in deciding how programs shall be combined to serve Indian goals and the tribe's direct responsibility toward each participating agency for fulfillment of commitments that may be undertaken.

Administration of agency programs to supply the mix that is decided upon by tribal authorities calls for coordination among the agencies. The pragmatic approach here is provided by the Indian desk of each major agency contributing to Indian development and, for the Bureau, an Assistant to the Commissioner who has interagency relations as his major assignment. Typically, this is an assignment to assist the agency head and his principal staff in keeping lines of communication open, to monitor daily interagency developments, and to assure that practical problems requiring conference table discussions get such attention. Responsibility for promoting decent harmony among Indian program operations—one definition of practical coordination—is shared by all line officials of the participating agencies; it cannot feasibly be limited to a single office or staff.

The creation of the national council for Indian opportunity in March 1968, provided a capstone to the structure of program coordination. This body, composed of seven cabinet members and six Indian leaders, enables a continual review to be made of Indian needs and programs and permits decisions to be reached concerning administrative policy and program implementation that should be binding on all agencies represented on the council.

III. JOINT DEVELOPMENT—PROGRESS AND PROSPECT

Supporting and reinforcing the developmental efforts of Indian tribes and communities, the Bureau of Indian Affairs directly encourages and promotes Indian economic development. It does so through programs of resource development and management, of training in marketable skills, and for the creation of opportunities for wage employment in establishments induced to locate in "Indian country," as well as in tribal enterprises. Particularly with respect to the industrial aspects of these programs and to the public works needed to provide essential "social overhead," the Bureau's programs have in recent years been greatly exceeded by those of other Federal agencies that now also serve Indian communities, especially the Economic Development Administration and the Department of Housing and Urban Development.

NATURAL RESOURCE USE

Early in the Bureau's history, major emphasis was placed on making farmers of the Indians, but only in the Southwest have they generally taken to agriculture in earnest. Elsewhere the greatest success has been with livestock production. On only a few reservations have Indian farmers done well with dryfarming. Where grazing is a more common activity of Indians, irrigated agriculture, involving the integration of dryland grazing with irrigated pasture and hay production, has been very successful. Recently, however, Indian farmers in the Great Plains States have also become receptive to irrigated agriculture. Some are now assuming the initiative in developing irrigated agriculture, making use of pump irrigation, which demands precise and efficient management. Demands are now being heard, too, that small farm units be consolidated into larger operating units for improved and efficient production; action which the Bureau has urged upon the Indians for years. But small farm units and fractionated ownership continue as major problems requiring attention. Possibly the most obvious need in all aspects of Indian agriculture throughout the West is the upgrading of productivity. To meet the need of extended instruction and information for Indian farmers and ranchers, existing inventories of land resources must be completed through expanded technical assistance. On the basis of such complete data, progress can be speeded in the improvement of cultivation, cropping practices, rotation, farm enterprise combinations, and of management practices in general.

Water is rapidly becoming the most important and valuable resource in much of Indian country. Progress has been made in the past decade in stabilizing and improving Indian economies through expanded use of water for irrigated agriculture. Streams and lakes have been made valuable recreational assets to attract increasing numbers of paying hunters, fishermen, and vacationers to utilize associated facilities. Increasing use is also being made of water supplies for Indian domestic, commercial, and industrial uses. While Indians are looking forward to making greater use of their waters, others have put them to prior uses, thus jeopardizing Indian water rights. This is currently delaying Indian economic development activities. An excellent illustration is the situation at the Pyramid Lake Reservation, Nev. Here, despite efforts to stabilize the lake's water level to permit the establishment of comprehensive recreational development, the flow of water into the lake is being reduced by increasing upstream diversions for irrigation development of non-Indian lands. Throughout the areas where water rights are essential to the full development of Indian lands, accelerated development is needed to protect Indian water rights, by prior Indian use, from continuation of such encroachment.

Among other Indian natural resources are forests and minerals. Both are under use—at several reservations, under intensive use—creating sizable income and employment opportunities. An excellent example is the Navajo Forest Products Industry on the Navajo Reservation, which in fiscal year 1968 employed 452 Navajo Indians and paid $1,526,000 in wages to Indians. The tribe received $330,000 for stumpage payments, and $533,000 in net proceeds above costs. The capital value of the plant in that fiscal year was estimated to be $12 million. A continuing vital need in the forestry program is funding for timber inventories and growth projections. This is a similar need with reference to minerals. Minerals investigations to date are inadequate and much more survey work is needed.

Under the influence of Bureau resource programs, substantial gains have been made in the conservation and improvement of Indian natural resources and in the income derived from them.

- Total gross value of annual agricultural production on Indian reservations increased from $133 to $171 million during the period 1962–68. Production by Indian operators increased from $46 to $59 million.
- Lands used by Indians for agricultural purposes increased from 30.5 to 46 million acres.
- Annual value of livestock production from Indian lands increased from $47 to $61 million. Of this total, livestock production by Indian operators increased from $22.8 to $32.5 million.
- Production by Indians using irrigated lands increased from $8 to $11.3 million annually.
- Indian income from outdoor recreation and wildlife use-fees increased from $1.2 to $2.1 million yearly.
- More visitors using outdoor recreation resources came to the reservations, the number rising by 1966 to 7.1 million visitor days, from 3.7 million days in 1962.

Dramatic increases occurred during 1962–68 in Indian timber harvests and related benefits, which included stumpage income, employment, and wages.

- Between fiscal years 1961 and 1968, the annual Indian timber harvest increased from 490 to 952 million board feet.
- Annual stumpage income nearly doubled—from $8.5 to $21.1 million.
- Permanent year-long jobs increased from 3,430 to 6,440.
- Related wages rose from $17 to $32 million a year.

INDUSTRIAL DEVELOPMENT

In addition to this noteworthy improvement in the economic utilization of Indian natural resources, progress at what may prove to be an accelerating rate has been recorded in the field of industrial development. Because of the wage employment at stake, such development, as already noted, is especially important. This progress has been achieved against the unusual cultural background that has been described in preceding pages, which clearly is weighted rather seriously against the introduction of modern industry, with its time clocks, assembly lines, and production norms. With the advantage of a period of unprecedented sustained national prosperity, however, and with increasing support from other Federal agencies, the Bureau has succeeded in helping the Indian tribes add 132 plants to the 18 that at the end of 1961 were operating on or near the reservations. Indian employment in such plants increased from 1,050 to 4,630 by the end of 1968. Compared with the total reservation labor force of about 130,000, employment of 4,600 is a small figure; compared with 1,050 jobs in 1961, however, it represents a more than fourfold increase in 7 years. Continuation at this rate would bring industrial employment to close to 20,000 by 1975.

The record of this period provides clear evidence that, with training, Indian manpower can become a highly productive labor resource even for rather complex operations. For example, during 1965, the Fairchild Camera & Instrument Corp. located a branch plant of its semiconductor Division at Shiprock, N. Mex. on the Navaho Indian Reservation; by early 1969, this company had increased its Indian work force from 477 a year earlier to more than 1,000. Within the next 6 months the Bureau planned to help the company recruit and train an additional 500 Indian workers to be employed in a new $750,000 plant financed by the tribe.

The Bureau programs contributing to this impressive result are shared among the agency's several constituent offices. There is close operating rapport between the Economic Development and the Community Services Offices, respectively responsible for the industrial development and the employment assistance programs, the latter including on-the-job training. Similarly the Education Office of the Bureau is not only aware of the contribution that general educational advance makes to economic as to other community development, but is also actively cooperating with the Economic Development Office in such innovations as courses in distributive education. These are only the latest of vocationally oriented courses that help Indian youth learn about the American economy and prepare to find their place in its Indian variant.[2]

The Bureau's industrial development program is the joint responsibility of the Economic Development and Community Services Offices, as just noted. Their joint goal is to establish wage employment opportunities on or near the reservations and to enable members of the Indian labor force to acquire the skills necessary for such employment.

The role of the Office of Economic Development with respect to industrial and commercial development (apart from tribal enterprises, to be discussed below) is basically that of assisting the Indian communities to improve their physical facilites for industrial purposes and to bring their advantages of labor supply, facilities, and location, particularly the first of these, to the attention of industrial concerns. This entails competition with literally huundreds of communities throughtout the country which similarly seek to attract new and larger payrolls and thereby to strengthen and perhaps also to diversify and stabilize their economies. In light of the keeness of this competition, the expansion of industrial employment in the Indian communities at an average compound rate of 20 percent during the past 7 years is particularly remarkable. This office also works closely with the tribal authorities to provide financing from the Bureau's revolving loan fund and assistance in negotiating financing from other Federal or from commercial sources, as well as to provide expert counsel and technical advice in their negotiations with industrial prospects, other Federal agencies, and State and local authorities.

The lack of dependable and adequate financing has been a serious deterrent to Indian economic development. The Bureau's credit program is presently limited to (a) administration of a revolving fund for loans involving a total of $25.1 million appropriated over a period of 34 years; (b) use of tribal funds for the same purposes as loans made from the revolving fund; and (c) assistance in obtaining financing from customary lenders, both governmental and private. The significance of the foregoing amounts appropriated for the revolving fund is apparent when compared with the total financing of $324.5 million used in 1968. The revolving loan fund was the source of only 7.8 percent of the total, while Indian funds represented 28.4 percent, and funds from customary lenders amounted to 63.8 percent of the total. The 1968 total represents an increase of $33.6 million from 1967, of which amount less than $500,000 was available, under the heavy demands of other needs, for industrial development.

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[2] It may be worth noting that the interdependence of the several Bureau programs is recognized not only in the daily working relationships among the several divisions of the 3 program offices, and within the more tightly knit staffs of the area offices and agencies, but in the Washington office, through the device of the Commissioner's small staff. This is composed of the Deputy Commissioner, the Assistant Commissioners in charge of programs of community services, economic development, and education, and those responsible for the staff functions of administration, engineering, and program coordination, one or more assistants to the Commissioner, and the information and congressional relations officers.

Meetings of the small staff are held at call of the Commissioner, rather than being scheduled periodically for routine reporting on current activities. Once the major policy or program item occasioning the call has been disposed of, the opportunity is regularly used to canvass all participants for matters that are of general concern and that may at a later stage themselves call for a meeting of the small staff. To supplement working relationships and such conferences, there is distributed daily to each member of the small staff the Commissioner's reading file, made up of copies of all correspondence of the preceding day that is regarded by the Commissioner or any member of the small staff, as meriting such attention. This selectivity avoids the circulation of a bulky complete daily file and makes it possible for each member of the small staff readily to follow the flow of key correspondence arising from Bureau operations.

It is estimated that Indian financing requirements will expand over the next 5 years by more than $660 million, to a total of nearly $990 million. Of this increase, $98 million is expected to be needed by the end of 1969. A bill submitted by the Department of the Interior is now before the Congress providing for a $100 million increase in Indian financing. Of that total, $85 million would be utilized in increasing the revolving loan fund, and $15 million would be used in the guarantee and insurance of loans from private lending sources. It is estimated that the $15 million guarantee and insurance fund will generate an additional $105 million in loans to the Indian people.

The labor force of the typical Indian community (see pages 26–28, above), has been found to possess aptitudes that are particularly attractive to makers of a wide variety of products. The general aptitude tests (GAT) of the U.S. Department of Labor are comprised of 12 tests that have been found to yield a useful measure of nine aptitudes shown to be important for successful performance in a wide variety of occupations. Tests of Indian workers tend rather uniformly to disclose above-normal aptitude for spatial perception, form perception, manual dexterity, and eye-hand coordination. Such aptitudes are particularly relevant to such occupations as machinist, sheet metal worker, carpenter, office machine serviceman, equipment assembler, and machine operator, among others. In recent years numerous electrical equipment, radio manufacturing, electronics equipment manufacturing, and plastics products manufacturing industries have been induced to locate on reservations to take advantage of the attractive manpower opportunities.

It is the role of the Office of Community Services to work with the tribal authorities in identifying the skills already available in the Indian labor force and the aptitudes and vocational interests in on-the-job training, so that an approach to industrial prospects may be well documented. Thereafter, when such a prospect has been persuaded of the advantages offered, the two offices share responsibility in negotiating contracts for such training on the premises of the plant that is to go into operation. Here, too, the Bureau finds itself providing counsel and technical assistance in the related negotiations between the tribe, perhaps also the employer, and the Department of Labor, State authorities, et cetera.

The physical development of the community, with respect to housing, roads, and community facilities, is commonly very important to specific industrial development negotiations. Programs for these purposes, substantially supplemented by programs of other Federal agencies, are the responsibility of other parts of the Bureau, with which the industrial development and on-the-job training staffs work closely.

COMMERCIAL DEVELOPMENT AND TRIBAL ENTERPRISE

The 150 enterprises operating in "Indian country" at the end of 1968 included 17 commercial establishments, employing 150 Indian workers. The total also included four tribal enterprises, none of them commercial, employing 253 Indians.

These categories include only those ventures that have been undertaken with the Bureau's assistance and that reflect the use of Bureau resources for development purposes. An additional number of both types of enterprise represent Indian initiative, in which the Bureau has played an advisory role apart from any specifically developmental program. An important example of tribal enterprise is the Navajo Forest Products Industries, already described.

It is appropriate to omit such enterprises from the records of program accomplishments. Bureau field reports are being revised currently to provide both broader and more detailed coverage of all aspects of the reservations and their development. Such important aspects as the establishment of enterprises outside the Bureau's own programs will be included in this broadened scope.

PROGRAMS OF OTHER AGENCIES

Since 1962, as observed earlier, the role of other Federal agencies in providing assistance and support to Indian communities has expanded greatly. Much of this assistance, particularly from the Office of Economic Opportunity, has promoted the largely noneconomic aspects of community development. Other contributions have had a more direct impact on economic development, through the provision of roads and housing. Still other programs have related directly to economic and indeed industrial and commercial development, the latter including recreation and tourist-oriented facilities. Programs of this last category are almost exclusively those of the Economic Development Administration in the Department of Commerce.

The results of these programs, which in view of their size can only awkwardly be termed supplementary to the Bureau's efforts, are of substantial benefit to the Indian people. Some perspective on the relative role played by the Bureau and the Economic Development Administration may be gained by comparison between the funds currently being made available by the two agencies.

The Bureau's industrial development program currently has less than $800,000 for the entire range of its promotional, advisory, and negotiating services. This is supplemented from two other Bureau sources, the credit and the on-the-job training programs. Due to the extreme stringency of funds of the Bureau's revolving fund for loans, the extension of credit for purposes of industrial development amounted during 1968 to less than $500,000 while funds for on-the-job training were less than $2,250,000. The total of all Bureau funds comparable to those available through EDA was thus about $3.5 million. In fiscal 1968, EDA funded Indian industrial development, through grants and loans, in a total amount of nearly $19 million; for 1969 the allotted amount is $30 million, compared to $26 million allotted in 1968.

It is significant that the Bureau's industrial development program currently accounts for only $800,000 of a total of about $3.5 million (between one-fifth and one-fourth) of the Bureau's total funding of such efforts. The Bureau's funding, in turn, is only about one-sixth as great as that supplied last year by EDA. On the reasonable assumption that the Bureau's promotional, advisory, and negotiating services are essential, it may well be that EDA would have come closer last year to its allotment of $26 million and this year would fully achieve its target of $30 million for Indians, if Bureau funds had been larger.

It has often been argued that Bureau programs are inadequately financed. Experience since 1962, when such financing has been provided in this massive "supplementary" fashion, with such impressive initial results, yet falling short of reasonable targets, tends to support this view.

PROSPECTIVE ECONOMIC DEVELOPMENT

Ignoring at this stage the complex matter of assuring community situations, that in themselves are reasonably conducive to development along economic as well as more general lines, it may be useful to outline the steps that have been found effective as a systematic approach to economic development:

(1) Evaluation of economic potentials and alternatives;

(2) Coordination with State and local development agencies and groups;

(3) Establishment of priorities for development—taking into account not only resources to be developed, but schools, homes, medical services, recreational services, etc.

(4) A sophisticated promotional program integrated with the overall program.

As fully as possible, this is the approach now being used by the Bureau. Under it, the following activities are receiving attention as essential to continued success and improvement on the past record:

Community inventories.—For each Indian area we need more reliable current information on population, labor force, unemployment, prevailing wage rates, existing commerce and industry, transportation facilities in relation to regional and national markets, utilities and water services, State and local tax rates, composition of local governments, availability of raw materials, schools and medical services and quality of each, and culture and recreational facilities and services.

Much of the data required is now being gathered by the Bureau through a reporting system instituted in 1967. A uniform format is used in the preparation of Reservation Development Studies (RDS) for the principal reservations. These are designed to assemble and set forth such data as described above and any other information that may be found necessary for comprehensive planning and economic development. Thus, it is planned for the RDS to be updated annually and expanded to include additional diverse elements, such as data on housing, investment and consumer credit requirements, migration estimates, and educational and skill levels.

Other data require systematic gathering and statistical reporting by other agencies. The Bureau has consulted closely with the Bureau of the Census in its planning of the 1970 census of population and housing, to assure that the reports will be as valuable as possible for purposes of the Indians and of the Bureau. It is planned, moreover, to build on the 1970 census through interim compilation, in cooperation with the Census Bureau, of data yielding even more complete information on Indian communities.

The Reservation Development Studies are the responsibility of the Agency staffs, which are benefiting from increasing Indian participation. A particularly important example of Indian involvement in the comprehensive development approach is that of Zuni Pueblo in New Mexico, which is participating in the process of formulating a planning model for reservation development planning. Zuni Pueblo was selected as representative in terms of significant area and population, geographic isolation, and need. In addition, the Zuni have a leadership that has demonstrated a desire to participate actively in the development of comprehensive planning techniques. Also, the Zuni have formulated shortrun development goals and have a self-imposed tax system designed to augment local financing. Further, the Zuni Pueblo has been designated by the Economic Development Administration as an EDA action area. An area policy paper required by EDA was completed in 1967, providing additional planning impetus.

In addition to Indian involvement, one of the ingredients essential to the success of a comprehensive reservation development operation is the participation of appropriate Federal, State, and local government agencies. At the Zuni Pueblo contact at the field level has already been made with several agencies, including New Mexico State officials, Indian Health Service, EDA and HUD. The Office of Economic Opportunity has a staff member assigned to Zuni who is a primary participant on the tribal planning staff. Other exploratory discussions have been held with field staff representatives of Federal Water Pollution Control Administration (Interior) and the Soil Conservation and Forest Services (Agriculture).

Other community inventory items.—A program of modern large-scale topographic mapping has been developed jointly with the U.S. Geographic Survey. With adequate funding and accelerated execution, it can be completed throughout Indian country by 1973. A series of reports has been planned to identify specific business opportunities in various areas of Indian country. Such reports will pinpoint industries able to use the unique combination of natural resources, labor supply, and market potential existing in specific Indian areas.

Urban and regional planning.—In addition to new programs already underway, up-to-date plans must be developed, including master plans and adequate zoning regulations for all Indian lands capable of urban development. Area-wide planning and the employment of professional urban planners is necessary.

Community organization.—In each region an industrial development team is needed, comprised not only of tribal and Federal representatives but also of economic development specialists of State governments, railroads, utilities, local governments, businessmen, and organizations such as Chambers of Commerce. One of the important benefits of such an organization is an increase in the gainful employment of local Indians by local private industry and business.

Equalizing Indian job opportunities.—The Bureau has become aware both of relatively high employment of Indians by a few of the many enterprises located in the vicinity of Indian communities and of the generally low Indian employment in such establishments. Preliminary work is underway for a survey to provide reliable information defining the situation and opening the way for concerted efforts to correct it.

Equalizing Indian job opportunities is something the Bureau can help accomplish. It will involve closer cooperation with local officials and businessmen and an intensified counseling and training program for Indians in their home communities.

Training Indians.—Large pools of trainable labor can be decisive in our efforts to attract new industrial payrolls to Indian communities. However, a labor pool that not only is unskilled but is totally unconditioned to the concept of regularly scheduled work, continues to be a serious obstacle to maximum commercial-industrial development of some otherwise promising Indian communities. In the long run, it is the social climate of the community and the social health of the community's residents that suffer from on-again off-again employment situations.

Current Indian training programs are not adequately designed to meet all the specific needs of particular employers—and this is sometimes the crux of the absentee and drop-out problem. There is discontent on the part both of the employee and of the employer, which eventually results in strained employee-employer relations in the industry as a whole. Some of these problems unquestionably could be overcome by a more flexible and varied training service that will:

- Send Indians for specific training to an existing plant operation off the reservation, if this is required.
- Provide preinduction training in basic education and skills, in cooperation with the employer if he so desires.
- Provide onsite and on-the-job training with the employer's supervisors as instructors. (The Bureau's current training program generally operates this way.)
- Provide vocational training centers in Indian country to offer continual opportunities for skill training and a manpower pool for industrial selection.
- Provide followup services in counseling and employee relations with the local employers.

Developing Indian-owned commercial enterprises.—Training for managerial and submanagerial skills is equally important to creation of viable economies and balanced social structures in Indian communities. Except for the limited number of higher education scholarships the Bureau now offers Indian youth, which are aimed at fostering professional skills, little if any attention has been given to the need for preparing Indians to manage their own business and personal affairs.

The Bureau is therefore giving close attention to the areas of business management training and distributive education (sales, marketing, and merchandising). For example, during 1968, as a modest step, a 10-week program was completed, in cooperation with the University of Wisconsin and the American Cooperative League, to train at least one Indian from each Bureau area how to set up and manage marketing cooperatives for the benefit of large numbers of Indian people.

Developing tourist opportunities.—The development of a modern tourist industry under Indian ownership will be sponsored to take advantage of the tremendous tourist potential growing annually in the United States. This development calls for building facilities, roads, and other capital investments, combined with planning and control of land use to prevent improper development of commercial facilities detrimental to the most productive use of Indian properties.

Underway is an effort to extend franchise operations into Indian country. Indians, trained in management by the chain operator, would in time become the managers of motels and restaurants located on or near reservations which offer tourist potentials.

General promotion.—Indian lands and the Indian labor force suffer from neglect of the responsibility to carry on a sophisticated promotional effort. Such haphazard publicity as they do receive is either romanticized or in the form of unfounded attacks like those made in a recent television series.

A promotional effort aimed at the business community and sophisticated enough to compete successfully for such attention, is urgently needed. It should focus national attention on the Indian problem and identify solution through:

- Advertising in newspapers, magazines, radio, and television.
- An organized speakers' bureau to reach business and industrial organizations regionally and nationally and provide continuing liaison.
- High-quality publications—brochures, flyers, and reports to meet specific needs.
- Documentary films and slides, as well as feature stories, to illustrate opportunities and developments in Indian country.
- Well organized forums and other meetings between representatives of business, industry, and Government with Indian leaders. A first step in the latter phase of a national promotion effort was the meeting for industrial leaders held in New York in March 1968. Another national meeting is planned with State economic development officials to be held in 1969 to promote a more aggressive interest and use of State staff and other facilities for developing Indian land and manpower.

IV. Conclusion

The preceding parts of this paper have indicated, first, the general nature of the pursuit of a national policy of development with and for the benefit of communities of Indians, which in many ways are different from typical American communities as they are generally known and which also differ significantly among themselves, second, have identified the constraints—particularly cultural factors affecting economic behavior—that must be dealt with in carrying out such a policy, and, third, have recorded certain achievements and needs for further progress.

It may be useful to underscore the entire subject by pointing out, as former Commissioner Bennett has done in another paper in this compendium, that "a clear distinction should be made between those poor in America who are outside the productive life of the economy and those who are poor despite their ability to participate in the labor force." These are, indeed, "different aspects of the problem and require different treatment." It is in the determination, jointly with the Indians, of appropriately different treatment, in the adaptation of existing general programs to the requirements of distinctive community situations, and in the identification of opportunities for public support of Indian initiative, that the future of economic development lies for them.

Indications to date are favorable. The Indians and all who are concerned for their welfare and progress must hope that, after many decades of turns and shifts of policy, the Federal Government, with the participation of other public agencies and private organizations, is now embarked on a settled course of encouragement and support that in the foreseeable future will enable the American Indians to realize their full potential, economic as well as social and political, as citizens of the United States.

INDIAN DEVELOPMENT PROGRAM

By ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

FOREWORD

The Economic Development Administration's program to encourage industries to locate on Indian reservations was substantially expanded in 1967. Emphasis was placed on the importance of an overall development plan for each reservation and on the involvement of the tribal leadership in this planning process. In order to achieve an effective concentration of limited budget resources, the EDA program has been directed primarily at a selected list of reservations, which now includes about 66 percent of the total reservation Indian population. An effort has been made to closely coordinate the economic and social programs managed by various Federal agencies on these reservations. In particular, the Economic Development Administration and the Office of Economic Opportunity have closely coordinated their efforts. The types of assistance provided by the EDA include public works development, business loans, and planning grants. Provision of a public works infrastructure is especially crucial at the current early stage of industrial development. Efforts to provide this infrastructure have included the establishment of facilities for industrial parks on 12 of the selected reservations.

THE PROBLEM

The social and economic problems facing the American Indian are varied and pervasive. Because of the remoteness of so many reservations the Indian has often been isolated from the economic and social systems within which he lives. There has been little incentive for the reservation population to move toward self-sustained economic growth. Stagnation, hopelessness, and poverty characterize the lives of America's Indians—even those who have left the reservations.

Perhaps the greatest single element impeding the development of solutions to the problems facing the American Indian has been the evolution of a reservation subculture which transcends individual tribal lines. This subculture has produced individuals who are apathetic, have low self-images, tend to be failure-oriented, and feel that they have little or no control over the future. Bare subsistence is accepted as the normal condition of reservation life; poverty is a self-fulfilling prophecy. Consider, briefly, the nature of the social and economic problems which the Indian must face.*

PHYSICAL AND SOCIAL CAPITAL

Indian Lands and Resources.—Indian lands and resources have been severely depleted. Some experts attribute this fact to the Allotment Act of 1887, which was one of the first official attempts to provide for assimilation of the Indian into American life and formed the basis for what many feel was the final expropriation of Indian lands.

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* Much of the data contained in this section is taken from the unpublished Report of the Interagency Task Force on the American Indian, October 1967.

Under the act, each Indian family head who applied was to receive 80 acres of farming or 160 of grazing land, cut out and allotted from tribal lands. For all tribes, allotment reduced 140 million acres of Indian land holdings in 1886 to fewer than 56 million acres in 1965. Further division of Indian land has taken place through leasing, sale, and inheritance. Although Indians as a group are not land poor, little of it is of good quality. This has made it difficult to assemble areas suitable for ranching, let alone for comprehensive agricultural or industrial planning.*

Infrastructure.—Lack of public investments in infrastructure reinforces low-land value. Intrareservation transportation systems are grossly inadequate. As a result, the distances from potential industry sites on the reservations to most major markets bring high-transportation costs. Utilities and other public facilities are also relatively undeveloped. Basic capital facilities essential for growth can be provided, but they will be expensive.

Capital and Credit Availability.—Capital and credit shortages further limit reservations development potential; Indians, having little to begin with, are poor risks.

Urban Development.—Relocation of Indians from their reservations to urban areas has not proved successful, even with vocational training and various kinds of financial assistance. Even so, reservations populations tend to be widely scattered. Few Indian communities have as many as 3,000 people. The average reservation population density is quite low—only one person per 4.2 square miles.

Housing.—More than 50 percent of Indian and Alaskan natives live in one- or two-room houses, tar paper or mud shacks, old car bodies, or similar substandard housing. Approximately three-fourths of the 76,000 units of housing on reservations and trust lands fall below minimum standards.

Water for more than 50 percent of Indian families comes from open wells or ditches, or from potentially contaminated sources; cockroaches and rats are continuous problems; and, at least 80 percent of Indian and Alaskan native housing is constructed of inferior material.

Overcrowding is chronic: On the average five or six people spend their nights in the same room, often in the same beds. More than 70 percent of Indian houses appear to be too dilapidated to repair.

The result is that deterioration of homes and Indian population growth consistently outstrip new house construction on reservations. The Indians themselves are unable to meet housing needs. Perhaps only 1,000 Indian family heads could afford low-interest, long-term Federal Government loans for rehabilitation or expansion of their homes. Further, most Indians would have difficulty obtaining financing from other sources and repaying at the higher interest rates. This is a small percentage of the estimated need of 16,000 units needing repair.

High FHA construction standards designed for an urban environment often make Indian housing costs prohibitively high and exclude the building of traditional adobe or log structures where desired. On a $15,000 house, the costs of meeting these standards on a reservation are $3,000 to $6,000 per unit higher than they would be in a city.

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* For example, 37 percent of the Sioux's grazing land, and all but 13 percent of his cultivable acreage (which is only one-ninth of the Sioux's combined acreage to begin with) is now in enterprises run by non-Indians.

HUMAN CAPITAL

Employment.—Indian social history gives grim testimony to the devastating effects of sustained, hard-core unemployment on the individual, the family, and the group.

The Indian labor force is estimated at 120,000, approximately 30 percent of the total Indian population. Of these, almost 50 percent are chronically unemployed, compared with unemployment among all nonwhites of around 7.5 percent and United States of 3.5 percent. Because of limited skills, much Indian employment is seasonal or temporary; as such, 50 percent of the Indians who *do* work are "underemployed." Underemployment causes low incomes: only 10 percent of Indian families have annual incomes of $5,000; half have wage incomes below $2,000 a year, and 74 percent are below $3,000.

Skill Levels.—Management skills and business know-how is a scarce commodity in the Indian reservations. Most of the Indian labor force is unskilled and much of it unaccustomed to the requirements of steady employment.

Relocation.—Most Indians are unwilling—and as yet, probably unprepared—to leave their lands. Moreover Indian migration to cities in large numbers, and without adequate training, merely increases the number of urban unskilled unemployed.

Some relocation has begun. Those Indians who have left the reservation most often settled in Indian enclaves, often living in conditions equaling the worst reservation—bad housing, unemployment, unstable family lives—but without Federal reservation support. These Indians often find themselves neglected by State ad local governments and, like many other minority groups, are often discriminated against by local citizens.

Since 1952, a relocation program sponsored by the BIA has provided employment services in approximately 10 large cities across the United States. More than 10,000 Indian families have moved to cities under this program. By the end of fiscal year 1966, 62,000 Indians had been relocated and provided with vocational training. An additional 18,000 single Indians and family heads received special institutional vocational training. Approximately 11,000 of the 18,000 who started institutional vocational training completed the training; some 81 percent of these were placed in permanent jobs.

But relocation has not been an altogether effective solution to the Indians' social and economic problems. The program siphons off the more aggressive and able men from the reservations. Moreover, when compared with Indian population growth—averaging 3 percent each year since 1950—existing relocation programs do not offer a substantial solution to the problem of increasing numbers on the limited reservation resource base. Off-reservation migration for all causes amounts to about 2 percent of the population in any year. Indians have the highest birth rate (41.9 per 1,000) of any group in the Nation.

Nor does relocation, even when it is backed with vocational training, necessarily solve unemployment. In some areas, off-reservation Indian unemployment equals the high-jobless rate on reservations. Also, in locales with large Indian populations, many relocatees appear to experience race prejudice. For a variety of reasons, therefore, one out of every three relocatees eventually returns to the reservation, embittered and often more determined than previously to withdraw into welfare dependency.

Health and Medical Care.—In 1965, Indian infant mortality was placed at 35.9 deaths per 1,000 live births—11 points higher than the national average, and 20 higher than the rate in middle class neighborhoods where high home sanitation standards prevail.

Childhood disease prevention is also a serious need. Recent research suggests that children who recover from childhood diseases nevertheless may have been permanently damaged. For example, viral infections, complications of diarrhea-pneumonia, and inadequate protein supply have all been shown capable of leading to mental retardation.

Indian Education.—One-third of the 150,000 Indian children in States where BIA operates schools attend 245 Bureau schools. More than 23,000 go to BIA boarding institutions, thus removing them from their native culture and language. About 8,000 attend private (mainly church-sponsored) schools. The remainder are in the public system. In addition, upwards of 4,000 Indian children live in 18 bordertown dormitories and attend public schools.

The quality of this education is low. For example, average pupil-teacher ratios in BIA elementary schools are comparatively high—about 27 : 1. Moreover, in many instances Indian alienation is evident. Studies show very high correlation between measures of alienation and low academic achievement for a large sample of Indian students. This alienation is caused in part by the low number of Indian teachers. Only 1 percent of Indian children in public elementary schools have Indian teachers; only 1 percent an Indian principal.

Disinterest by non-Indian teachers may be another cause of the low quality of Indian education. By their own report, 25 percent of elementary and 24 percent of secondary school teachers preferred not to be teaching Indians.

Parents of children contend that they have little influence on the educational programs provided to their children. Whatever the cause, the result too often is that a chasm exists between the child's home culture—Indian, tribal, usually non-English speaking—and the white culture represented by the teacher. Frequently Indians neither understand what is expected of their children as students, nor of themselves as parents. Most have, at best, ambivalent attitudes toward the schools their children attend.

Curriculums, books and teaching materials, and underlying educational objectives for the most part reflects life in non-Indian, middle-class American society. Emotional pressures generated by this cultural conflict help account for the high Indian drop-out rates and low achievement levels. Especially significant is the tendency among Indians to drop out just before or during high school. The rate is double the national average. The adolescent often simply decides to withdraw back into the tribe and the reservation. That he chooses the tribal community in preference to "assimilation," even in the demoralized condition in which the tribe survives today, testifies to the difficulties of adapting to an alien non-Indian culture.

CONCLUSION—A NEW APPROACH

It is evident that the Federal Government has not designed policies and programs which have dealt adequately with the problems and conditions outlined above. This is not due to a lack of funds but rather to the difficulty of the problem and a lack of direction on the part of interested Federal agencies.

On a per capita basis, current expenditures for programs and services to Indians are the highest in the Nation—over $1,000 per Indian annually. There are approximately 20,000 total Federal employees from a number of different agencies and some half billion dollars per year in resources expended to help deal with the problems of approximately 400,000 Indians on reservations.

In spite of the extremely heavy rate of assistance to the Indian, approaching $5,000 per family unit per year, the amount of income per family averages around $3,000 per year. Thus, Federal investment in programs for the American Indian does not even result in a one-to-one ratio between dollars spent and family income.

Renewed efforts to attack the Indian problems can succeed only if Indians can be assisted in becoming productive members of the American society.

Since substantial relocation of Indians to producing economic areas is not viable at present, the only way to enhance Indian productivity is to bring the means to produce to Indian areas. Governmental experience and recent economic indications show that industrial and tourist development efforts can succeed on many reservations if reinforced by other community and social programs.

First, programs such as the Area Redevelopment Administration, Economic Development Administration have shown that Government efforts can assist industry and tourism enterprises to locate in previously unproductive areas. For example, EDA has assisted many firms to locate on Indian reservations by means of 23 business loans totaling $11 million and 7 working capital guarantees in the amount of $2 million.

Second, well documented industrial trends show that due to the decreasing importance of transportation and other location costs, many industries are increasingly locating in remote areas not unlike Indian reservations.

Third, there are numerous cases of successful location of industries on Indian reservations. Firms such as IBM, Fairchild Semi-Conductor, General Dynamics, Alaska-Pacific Timber Co., and Spartus Corporation have moved to Indian lands and are providing a significant number of jobs for Indians.

In sum, although vast economic problems exist in Indian areas, carefully directed policies and programs can make a significant impact on the problems of poverty and unemployment on many of the reservations.

Development of Present EDA Strategy

In 1967, EDA realized that if it was to effectively assist the Indian reservations to achieve economic growth—more jobs, higher salaries, and a higher standard of living—it would have to develop a more effective strategy. Prior ARA and EDA experience had shown that the Indian reservations could not come up with enough good project applications to which the agency could react. This resulted in few project approvals and the fairly low level of EDA expenditure on reservations up to fiscal year 1967 (see chart, p. 367, infra.)

For a variety of reasons and because few Indians were actually involved in the development and implementation of programs directed toward their wellbeing, most reservations lacked the internal capacity to plan for their own development, that is, to establish the goals, priorities and projects, which together constitute the tribes' long-range programs or outlines of action to be undertaken over a period of several years.

EDA decided to take a more active role in the development of projects on Indian reservations. The Agency felt that it was only by working with the reservations in the development of a capacity to plan for their future and by providing them with an incentive to move toward self-sustained economic growth, that they would be able to receive EDA assistance at a level equivalent to other redevelopment areas.

STRATEGY

EDA's strategy was based on the following assumptions: First, economic development should be predicated on the participation of the Indian people, the Indian family, and the Indian community in solving the problems. Experience has shown that for any program to be successful, the Indians themselves must assume the leadership in developing and implementing it.

Second, a comprehensive, coordinated effort should be mobilized from the many groups, agencies and departments within the Federal Government in support of Indian programs. Emphasis must be directed toward the need for integrated planning aimed at altering the conditions in the home, the school, the community, and the geographic areas as a whole.

EDA's long range goal is a single planning requirement for each reservation upon which all Federal investments would be based. In the past the various Federal Indian programs were not coordinated; each department or agency decided what was best for each Indian reservation and proceeded to devise and implement its own particular programs without the benefit of the desires of the Indian themselves or of the experience of other interested parties. This resulted in duplication of effort in many areas and a complete lack of attention in others.

Also, in order to make sure that Indian reservations received EDA program funds on a basis equal to that of other EDA redevelopment areas, it was decided to allocate specific funds for use on Indian reservations. Considering the reservation population and the investments required to have an impact on their economic development, in fiscal year 1968, EDA allocated $19 million to a selected number of reservations which had the greatest potential for economic growth. This allocation of funds demonstrated to these reservations that EDA was ready to assist them in their development efforts. Furthermore, the agency as a whole was informed that a priority had been set for economic development on Indian reservation projects.

In October 1967, an Indian desk was established within the Office of Policy Coordination. The Indian desk was charged with responsibility for coordinating EDA's Indian program with other Federal agencies, State Indian commissions, private industry, consultants, et cetera. This desk was headed by an Indian program manager, who has overall responsibility for the development of the special program.

THE SELECTED INDIAN RESERVATION PROGRAM

To implement this new strategy, EDA set up the Selected Indian Reservation Program. Because of the larger number of Indian reservations and its limited funds, it was obvious to EDA that a distribution of its resources among all eligible reservations would not provide any one with a sufficiently massive input to overcome the conditions which were currently inhibiting growth. Further, in order to maximize the return from the Federal funds invested on Indian reservations, the combined resources of several Federal agencies working jointly under a single comprehensive development plan was needed.

ACTION LIST RESERVATIONS

In the late spring of 1967, an agreement was reached between OEO and EDA to combine their resources in helping a select number of Indian reservations referred to as the "action list." Fifteen reservations which demonstrated the greatest potential for sustained economic growth and viability were chosen to participate. These reservations are located in various parts of the Western United States and have a population of 185,000 or 53 percent of all Indians living on reservations:

Reservation	State	Population	Percent unemployed
Navajo	Arizona	125,000	39.0
San Carlos	do	4,473	74.0
Salt River	do	2,212	43.0
Gila River	do	7,113	55.0
Annette Island	Alaska	1,000	19.3
Zuni Pueblo	New Mexico	5,000	77.0
Mescalero	do	1,559	61.0
Blackfeet	Montana	6,381	39.0
Crow	do	4,097	44.0
Red Lake	Minnesota	2,538	38.0
Fort Berthold	North Dakota	2,657	79.0
Standing Rock	South Dakota	4,720	47.0
Pine Ridge	do	10,496	32.0
Rosebud	do	5,432	61.5
Lower Brule and Crow Creek	do	1,731	70.5

The criteria used in delineating these reservations included:

1. Community factors:
    - (*a*) Tribal leadership interest in economic development.
    - (*b*) Manpower pool.
    - (*c*) Education facilities.
    - (*d*) Training programs.
    - (*e*) Availability of management skills, within the community and adjacent to it.
2. Material resource factors:
    - (*a*) Status of reservations facilities.
    - (*b*) Availability of significant qualitative amounts of appropriate raw materials.

(*c*) Current industrial activities.

(*d*) Probability of adequate financing—availability of tribal, other agency, private funds.

3. Physical location factors:

(*a*) Proximity to regional growth centers (market factors).

(*b*) Transportation between the reservation and these centers.

OBJECTIVES

The main advantages of the Selected Indian Reservation Program are:

The *concentration* of Federal agency resources in a number of selected reservations is intended to accelerate the planning for future development and the approval of needed programs.

The *cooperation* of Federal agencies in this effort is aimed at overcoming the disjointed nature of multiple Federal program inputs on the reservations.

The *acceleration* of Federal investments is intended to generate greater impact in a shorter period of time.

The *selectivity* of the program is designed to provide an incentive to those reservations with the greatest potential, so that economic and social viability can be achieved as quickly as possible.

The following principles guide the development efforts of the program:

1. Investments on Indian reservations should be based on a comprehensive development strategy containing an outline of action to be undertaken over several years and specifying the tribes' priorities regarding its goals and the specific projects to be implemented. These plans are continually updated as economic conditions of the reservations change and improve.

2. The goal should be a single planning requirement upon which all Federal investments are based.

3. The means to achieve a catalytic effect should be based on a responsiveness to the desires, needs and plans of the Indians as expressed through their tribal councils.

EDA recognizes that the tribal attitude toward change will, in the long run, make a more positive contribution to the progress, or lack thereof, than will any other single resource. Thus, tribal involvement is an essential element of the selected Indian reservation program. Both long range planning and project selection must be based on a response to the Indians' desires, as expressed through their leadership. No coercive cultural or economic assimilation is intended—in fact, the program is designed to avoid such coercion.

Work was begun to prepare the action plans for each of the selected reservations. These plans are for EDA's internal use and specify projects which it would consider funding over the next 3 to 5 years. The tribal leadership on each of the 15 reservations was deeply involved in the development of the plans. Meetings were held on each reservation with tribal leaders and officials of EDA, OEO, BIA, SBA, HUD and PHS. Several months later, tribal leaders were called to locations in the Southwest and North Central parts of the country to discuss as a group, the developments to date and their priorities for economic development. Draft action plans were then prepared by the tribes in conjunction with EDA economic development specialists and the area offices. The first action plans for the 15 action list reservations were completed by 1968. These reservations have submitted applications to the appropriate Federal agencies for the loans and grants outlined in their plans and funding has been accomplished on numerous projects to assist the Indian reservation's economic development programs.

PLANNING LIST RESERVATIONS

In July 1968, 14 additional reservations and groups of small reservations were selected to take part in the Selected Indian Reservation program:

Reservation	State	Population	Percent unemployed
Cheyenne River	do	4,008	25
Turtle Mountain	North Dakota	7,187	52
Leech Lake	Minnesota	2,796	26
Papago	Arizona	5,358	23
Fort Apache	do	5,407	43
Hopi	do	5,556	48
Colorado River	do	1,628	47
Eight Northern Pueblos	New Mexico	3,301	(1)
Jicarilla	do	1,474	43
Nevada reservations (22)	Nevada	4,418	(1)
Fort Yuma (Quechan)	Arizona	1,634	35
Rocky Boys	Montana	1,149	50
Fort Peck	do	4,196	51
Flathead	do	2,761	34
Fort Belknap	do	1,585	30
Northern Cheyenne	do	2,448	22

[1] Not applicable.

This second group, called the "Planning List", is working to develop the internal capacity necessary to formulate overall economic development plans. These tribes will concentrate on establishing goals, priorities and projects, which constitute their long range development programs. In order to assist in these efforts, Federal officials have been meeting with the leaders of these reservations to outline the program and to assist them in developing a planning capacity.

The Selected Indian Reservation program, both action and planning lists, includes 52 reservations having a population of 240,000, comprising 66% of all reservation Indians. An additional 50 reservations, having a population of 20,000 are also designated as redevelopment areas by EDA. While these latter reservations are eligible for EDA economic assistance, because of their relative lack of economic potential, EDA has decided that they should not receive the specialized consideration given to the selected Indian program reservations. Thus, EDA is presently giving assistance to tribes representing approximately 75% of all reservation Indians. The remaining Indian reservations not presently designated are too small in population to justify EDA assistance. However, where they are located in a fairly compact geographic area, EDA will designate them as a single unit and will assist them in planning for their common economic development.

Reservations will move into and out of the Selected Indian Reservation program. For example, when a reservation on the "action list" has developed a sound economy or sustained growth, it will no longer need the special attention of this program and will be removed from the "action list". The vacancy created may be filled by a reservation from the "planning list"; another reservation will then be chosen to fill the vacancy in the planning list. Conversely, if a reservation does not participate effectively in the Selected Indian Reservation program, it will be replaced by another reservation.

PROGRAM ACTIVITIES

One of the major concerns and aims of the Selected Indian Reservation program is to help tribes develop industrial development potential. To provide tribal leaders and tribally-employed development professionals with a sound understanding of industrial development procedures, EDA and OEO jointly sponsored the basic and advanced industrial development courses conducted by the American Industrial Development Council. These courses were conducted in February and December 1968, respectively, for the "action list" reservations. The basic course was repeated for the "planning list" reservations in January 1969; they were given the advanced course in April 1969.

EDA and OEO have also initiated a series of industrial development conferences which permit the selected reservation leaders to promote their industrial opportunities with major industrial firms. Conferences were held in Los Angeles and New York in the spring of 1968 for the "action list" under the auspices of the National Congress of American Indians and five conferences are scheduled in 1969 for both "lists". Tribes set up booths displaying examples of products they manufacture and tribal leaders outlined the advantages of locating branch plants on their reservations to some 300 industrialists during the show and at a cocktail party and luncheon.

EDA made certain that government officials were not present at any of the meetings between industrialists and tribal leaders. This forced the Indians to act on their own and lead them to realize many of the problems they must confront in implementing any industrialization. program. To improve the capacity of the selected reservations to help themselves, EDA has funded planning grants in 1968, which provides 62 planners serving 45 reservations. These individuals are employed by the tribes and provide the Indian leadership with needed staff assistance in planning and implementing sound economic development programs. Planning staffs are provided specialized training in economic development on reservations at EDA conducted planning seminars, the first of which was held at Bartlesville, Okla., in October 1968. The emphasis in this seminar and the courses is upon sound planning by the tribal leadership and effective and coordinated development.

Reservation program reviews were held in February and December, 1968, for the "action list" and for the "planning list" in January, 1969, to further assist in sound planning and the efficient use of Federal resources. The program reviews provide an opportunity for the tribal leaders to present their overall development program to key personnel from FHA, Labor, SBA, HUD, HEW, BIA, PHS, OEO, and EDA and then to discuss the soundness of their programs and the possible roles of the various agencies. These have proved most valuable in strengthening the reservation programs and in stimulating inter-agency coordination.

TYPE OF EDA ASSISTANCE

Over the past 2 years all EDA designated Indian reservations have received the following types and percentages of economic assistance: Public works, 72 percent; Business loans, 25 percent; and planning grants and technical assistance, 3 percent.

Estimated allocations for fiscal year 69 are approximately the same.

These allocations are based on EDA's evaluation of the needs of the reservations as outlined in their action plans. Due to the lack of any appreciable economic infrastructure and the extreme poverty exhibited on most reservations, most of the assistance has necessarily been given to provide a basis for future investment. For example, industrial parks have been constructed on 12 of the 15 "action list" reservations.

The following are examples of projects on Indian reservations which EDA has already funded:

Public Works:

Aid in construction of:

- Industrial parks
- Recreational/tourist complexes
- Water and sewage systems
- Airports
- Fire protection systems
- Access roads
- Training and community centers

Business Loans:

Assistance in establishing:

- Copper mining operations
- Furniture plants
- Tribal stores
- Printing plants
- Plants producing electronic controls and valves
- Cattle feed lots
- Sawmills
- Electronic firm
- Plants manufacturing prepared feed
- Citrus groves

Planning assistance and technical assistance:

- Feasibility studies for various types of manufacturing operations
- Studies to help establish job planning offices
- Grants to staff and implement industrial development programs and to plan for economic growth
- Grants to help expand the skill-training programs
- Water impoundment studies
- Prefabricated plant studies

EDA also provides grants to various tribes to pay up to 75 percent of the cost of hiring planners in the areas of industrial development, tourist and planning. Planning grants are also given for hiring planners for the four newly developed districts, such as the Indian Development District of Arizona (IDDA) and the United Tribes of North Dakota. If EDA is not able to provide such planning grants, OEO has done so.

For fiscal year 1969, EDA allocated $30 million for all Indian reservations, whereas the prior fiscal year funds had only been allocated to the selected Indian reservations.

INDIAN PROGRAM EXPENDITURES

In keeping with the philosophy that economic development assistance should be directed to those reservations having the greatest potential, $18 million has been allocated to those reservations on the selected Indian reservation program's "action list." There is no specific allocation for those reservations on the "planning list," since the main thrust of EDA's involvement is to assist them in developing a planning capacity. For other qualified reservations, economic assistance is given on a project by project basis. The following chart indicates EDA investments on Indian reservations since 1966:

Fiscal year 1966:[1] EDA total appropriated funds	$332,425,000
Fiscal year 1966: EDA expenditures on Indian reservations	3,295,000
Fiscal year 1967: EDA total appropriated funds	296,100,000
Fiscal year 1967: EDA expenditures on Indian reservations	18,040,000
Fiscal year 1968: EDA total appropriated funds	275,000,000
Fiscal year 1968: EDA expenditures on Indian reservations	18,873,000
Fiscal year 1969: EDA total appropriated funds	274,740,000
Fiscal year 1969: Allocation for Indian reservations	30,000,000
(Selected Indian reservation "action list" allocation)	(18,000,000)

[1] Expenditures for the period fiscal years 1961–65 are not available as Indian reservation projects were not separated from overall commitment of funds.

Apart from the selected Indian reservations, a total of 50 reservations are presently qualified by EDA. This compares with 41 reservations at the end of fiscal year 1968 and 29 at the end of fiscal year 1967. While the present thrust of EDA's involvement is directed toward the selected Indian reservations, to date it has invested a total of $16 million in these other designated reservations.

EDA development assistance to these selected Indian reservations during fiscal year 1968 was approximately 70 percent of grants and loans to all Indian reservations. Since July 1, 1967, EDA has provided assistance to the following groups of reservations:

	Number of reservations	Expenditures since July 1967 (as of Nov. 30, 1968)	Applications pending (as of Nov. 30, 1968)
Action list	15	$10,660,000	$8,907,000
Planning list	44	9,061,000	1,270,500
Other reservations	50	5,675,780	3,918,000
Total		25,397,000	14,095,000

While it is too early to adequately evaluate the results of the Indian program, EDA has assisted the "action list" reservations in developing the institutional capabilities for planning their own economic and community development. The tribes on these reservations now understand their own problems, have planned for their future development, and are able to effectively work with the private sector and all levels of government—Federal, State, and local—in obtaining needed assistance. Equally as important, EDA has instilled all reservations with a sense of change—an attitude that they can effectively plan for their future and that the Federal Government will assist them in carrying out their efforts.

OFFICE OF ECONOMIC OPPORTUNITY

As EDA's partner in the Selected Indian Reservation program during fiscal year 1968, OEO committed $22,136,063 in funds providing 6,871 nonprofessionals and 1,114 professionals full time jobs on the 31 selected Indian reservations. Most of the projects will be in operation in fiscal year 1969 and will develop jobs in a variety of areas:

Mutual help housing.
Community beautification.
Headstart programs (full-year and summer).
Health education.
Community development.
Ranger corps.
Home management.
Parent child centers.
Home improvement program.
C & A.
Alcoholism.
Migrant program.
Emergency food programs.
Business management assistance.
Legal services.
Multi-purpose neighborhood centers.
Trailer park and land development.
Adult education.
Juvenile counseling.

This total does not include OEO's funding or Neighborhood Youth Corps, Operation Mainstream, work incentive programs, Upward Bound, VISTA or Job Corps. If funds allocated to these projects were included, OEO funding of the selected Indian reservation program would double. As mentioned previously, OEO also provides funds for the hiring of planners on the reservations.

THE INDIAN DESK

In addition to having the general responsibility of coordinating EDA's Indian program with other Federal agencies, State Indian commissions, private industry, consultants, etc., as the central point for all EDA Indian activities, the Indian program manager has jurisdiction of the $30 million allocated to all Indian reservations and works with all seven regional offices in establishing target allocations. The Indian desk also continually provides advice on all problems and projects and follows up on project applications until they are finally approved. To aid in this latter activity, the Indian program manager has set up an Indian working committee, comprised of representatives form the various Washington offices of EDA which work with Indian reservations. This committee meets periodically on all aspects of the Indian program and provides an effective vehicle for the Indian program manager to coordinate EDA Indian activities.

The Indian program manager has also strengthened relations with other Federal agencies, particularly with OEO, Labor, HUD, and HEW, which have appointed individuals to work specifically with their Indian programs. Discussions are currently being held with a view of extending relations with other agencies which have ongoing activities on Indian reservations.

The Indian program manager also meets periodically with the National Council of Indian Opportunity. This organization was set up by President Johnson in 1966, with the Vice President as Chairman. It is composed of six Indian leaders and six Cabinet officers and provides an effective vehicle for strengthening contact between the Federal Government and Indian leadership and for coordinating the efforts of all interested Federal agencies.

Although, at the present time EDA has done little with State Indian reservations, it is expanding its efforts in this area with the recent addition to the Indian desk of personnel who will work exclusively in this area.

While projects are important, they are only of lasting value if they accurately reflect a comprehensive development strategy as outlined in the various action plans. The Indian desk is constantly reevaluating these plans to insure that they reflect the most effective means of achieving the goal of economic self-sufficiency and community development. Further, even with its concentrated effort toward Indian reservations, EDA's resources are not in themselves sufficient to insure the success of such action plans, no matter how perceptive they may be. The Indian desk is, therefore, in contact with other Federal agencies with the object of bringing them into active participation in the implementation of these plans. However, even though EDA efforts have been partially successful over the past 2 years, any complete coordination of Federal investments on Indian reservations must be directed from above. EDA would like to see all Federal investments based on reservation development priorities and the projects set forth in the action plans which have been completed for the 15 action list reservations. Once action plans have been completed for the planning list reservations, Federal investment could be based on them as well.

It cannot be stressed too strongly that the essential aspect of the success or failure of EDA's program is that the Indians themselves must be brought into the initial planning process. The tribal attitude toward change will, in the long run, determine their progress and allow them to move toward self-sustained economic growth.

THE ROLE OF INDIAN TRIBES IN ECONOMIC DEVELOPMENT AND THE EFFORTS OF THE INDIAN DIVISION OF THE COMMUNITY ACTION PROGRAM OF THE OFFICE OF ECONOMIC OPPORTUNITY TO ASSIST IN INDIAN RESERVATION ECONOMIC DEVELOPMENT

By JAMES J. WILSON *

FOREWORD

In keeping with the Office of Economic Opportunity's mandate to be an innovative agency, the OEO's Community Action Programs on Indian reservations have encompassed a variety of economic and social activities. In cooperation with the Economic Development Administration, the OEO has concentrated its activities on a selected group of reservations judged to have the greatest development potential. The OEO has stressed the importance of a reservation development plan created by the tribe itself, and among its basic objectives, the OEO has included assisting the tribal leadership to develop both the administrative sophistication necessary to deal successfully with Federal agencies and the sense of social concern required to carry out their responsibilities to the reservation residents. Among the specific economic development needs identified in this OEO statement are additional Federal investment in basic public utility systems on the reservations, special waiver authority for reservations to participate in Federal grant programs without providing the normal local matching funds, and special tax incentives to encourage industry to locate on reservations.

Introduction

The Office of Economic Opportunity does not have an economic development policy of the type generally associated with professional economic developers. The OEO had been given the legislation to be the command post for a continuing Federal attack on all of the causes of poverty. OEO was to engage in comprehensive, cooperative planning and to bring purpose and effectiveness to the many ongoing, but separate, efforts throughout the Government. The economic development policy of OEO should have been a composite or concensus of the interagency efforts. The community action program was to allow "maximum feasible participation of the residents to be served." The OEO was to make financial assistance available to local communities for purposes of "Community Action" to solve local community problems.

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The OEO established "guidelines" for programs to be developed locally. Some "national emphasis" programs were initiated by OEO. Community action programs took many forms. Interagency cooperation was not always possible because of either specific legislation or interpretation of intent of the legislation. The OEO general policy became one of total human resource development. Frequently, economic development was associated with industrial development and the fear of exploitation. Emphasis within human resource development moved toward social and educational development and away from economic development. The need for jobs with earned income has within the last 2 years caused major shifts in an opposite policy direction.

The remainder of this document will deal with recent and current topics. The subject to be dealt with will be delimited to Federal Indian reservations participating in OEO community action programs. The following material is organized in this manner: (1) A brief review of the recent and current economic development situation of Federal Indian reservations; (2) a brief discussion of the OEO/CAP Indian division philosophy and funding policies relating to Indian reservation economic development; and (3) specific recommendations.

I. RECENT AND CURRENT ECONOMIC DEVELOPMENT EFFORTS ON FEDERAL INDIAN RESERVATIONS

Every Indian tribe on a federally supervised reservation has had either a limited development plan or an overall economic development plan (OEDP). Nearly every Indian reservation has made attempts to create jobs on the reservation for tribal members. Because of lack of basic facilities, transportation, community services, and frequently extreme isolation, relatively few successes could be reported of industry moving onto reservations. Where interest was shown by private industry, there often existed situations of limited financial assistance and the relative lack of knowledge on the part of both tribal officials and Government officials of the specific needs and expectations of private industry when every community in America was also competing to attract new industry. Tribal resources, human, financial, and natural, frequently went undeveloped while learned men studied "the Indian problem" from the sociological and anthropological angles. Windfalls from the Indian Claims Commission awards frequently are distributed on a per capita basis or doled out for family plans resulting in almost no appreciable long-range gain to either the individual or the reservation community. Until very recently, tribal funds held in reserve were deposited with the U.S. Treasury at minimal interest rates. Present efforts are being made to invest in short-term bonds with rates considerably higher than U.S. Treasury rates.

Current efforts find many tribes using tribal funds to put up matching shares for basic facilities such as water, roads, buildings, powerlines, etc. Many tribes are or have gone deeply into debt on loans for such basic facilities, frequently failing (or unable) to arrange margins of safety in the repayment schedules. Many tribes have used OEO funds to employ economic development staffs; others have secured grants from agencies such as the Economic Development Administration (EDA) for economic planning staffs.

Presently, under an agreement between OEO and EDA, there are 31 tribes participating in the Selected Indian Reservation program (SIR) of economic development with 15 tribes in the action group (these tribes emphasizing implementation of existing OEDP's) and 16 tribes in the planning group (these tribes emphasizing the development of updated OEDP's). The tribes in the SIR program have participated in training programs conducted by the American Industrial Development Council sponsored by OEO and the National Congress of American Indians (NCAI). The tribes in the action group of the SIR program have participated in four Indian industrial development conferences sponsored by NCAI under a grant from OEO. Early reports on the Indian industrial development conferences indicate favorable results.

II. THE OEO/CAP PHILOSOPHY AND FUNDING POLICY RELATING TO INDIAN RESERVATION ECONOMIC DEVELOPMENT

The present Indian division philosophy and funding policies are not new but are simply reflective of a point in time of an evolutionary process. It is expected that this process will evolve further as new experiences develop and that at no time will there be either a fixed policy or detailed, written policies in regard to either tribal programs or economic development.

Relevancy of programing is dependent on a continuous process of reevaluation. To enable an administrator to meet special needs in programing, there needs to be a relatively simple and basic philosophy to which a funding policy is then adapted.

The basic philosophy of the Indian division has been defined thus: (*a*) To direct-fund Indian tribes to allow tribal governments to develop the program sophistication necessary for all levels of government to develop in their relationship to the Federal Government and (*b*) to develop, through a process of conditioning, the social responsibility of the tribal governing body to the reservation residents (both Indian and non-Indian) expected of local governments in nonreservation communities.

Conditioning of behavior requires incentives so the funding policy adapted to the philosophy calls for distribution of grant funds on a formula basis. After some experimentation, the following funding policy has been developed for the present time: 80 percent of the funds are distributed on a per capita basis amongst all participating reservations; 20 percent of the funds are held back for incentive grants to stimulate desired behavior and to provide certain special group services, such as the AIDC and NCAI services.

In the application of this basic philosophy and funding policy to economic development on Indian reservations, there are many considerations which result in the vital necessity of considering each reservation program individually. However, thereare a number of considerations and questions which have applicability in each reservation situation. Some of the many considerations and questions which the Indian division has considered and/or dealt with follows:

How should a situation be assessed to assure a relevant reference point?—This is particularly important in dealing with tribes which have maintain a strong tribal cultural identity. Wherever possible, we seek to have as much of the assessment as possible made by people from within the community. Where local residents lack skills, we should train them.

Determining relationships identifies relative roles.—There are many relationships which must be clarified before effective economic development can be undertaken. The relationship of the reservation to surrounding communities, the tribal leaders to surrounding community leaders, etc. With role identification, a more accurate evaluation of the potential of development can be made. Some reservations probably should not think about economic development (Santa Ana and Sandia in New Mexico, Salt River in Arizona).

What can a single Federal agency do to adjust its rate of development to the timing of other agencies?—This seems to be the crucial question facing the Federal Government since every agency of Government has a role to play. The Director of the OEO/CAP Indian Division recommended over 2 years ago that an Office of Indian Program Coordination be established in the Executive Office of the President. In March of 1968, the National Council on Indian Opportunity was set up with the Vice President as chairman. This Council has not met as of this date under the new administration.

Should the level of program sophistication of the tribes be a major determinant in programing? The idea of conditioning and incentives emphasizes differences in program sophistication and makes it absolutely necessary to program according to this factor.

Economic development on a communitywide basis is a competitive undertaking for which both the leadership and the community must be prepared.

Human development probably leads to economic development but economic development doesn't necessarily lead to human development.

Tribal plans must have philosophic goals in relation to Indianess, culture, and reservations.

A plan alone is never enough.

Should job development be concentrated on male jobs?

Should efforts to attract industry be specialized by industry?; by size?; new industry or branch plants?

What are roles for individuals and private agencies in assisting tribal economic development?

Do you wait for leaders to appear or do you attempt to develop leadership?

These and hundreds of other questions and considerations come up when Indian reservations consider economic development in the full context of total community development and the economic betterment of the members of the community. Where successful economic development is taking place, there is to be found a combination of factors which economic development specialists can presently quite accurately define.

III. SPECIFIC RECOMMENDATIONS

With the present capability of economic development specialists to determine what factors must exist within a community to enhance such development, it can be fairly well determined what kinds of actions the Federal Government might profitably undertake to assist Indian reservations in their efforts of economic development. Some needs may not exist in every situation, but every situation has some needs. The following recommendations are suggestive and are not intended to be totally inclusive:

Special tax credits.—New legislation is needed to give business and industry incentives beyond offerings presently being made to offset factors of isolation, transportation, and services. The areas of application could be (1) employment tax credits, (2) transportation tax credits, and (3) accelerated plant and equipment depreciation allowances. The tax credits should be for a specific number of years and should be scaled to factors of area economic depression and the company earnings situation.

Federal investment in basic facilities.—To ease the rate of movement of population from rural to urban centers it is going to be necessary that the Federal Government make substantial investments in rural growth centers for essential basic facilities such as roads, water systems, sewage systems, heavy power systems, and in some cases railroad spurs and warehousing facilities.

Special waiver authority for matching funds grant programs.—The Secretary of each Department making matching funds grants should have legislative authority to waive part or all of the required local non-Federal share. We frequently find that without the existing waiver authority of OEO, Indian tribes would be too poor to participate in the poverty program.

The National Council on Indian Opportunity be given specific legislative direction and funds to establish a two-part American Institute (of Tribal Affairs and of Indian Studies).—Legislative direction should be given the NCIO to truly establish it as the command post of coordination of Federal Indian programs. The NCIO should have funds to operate a two-part American Indian Institute to deal in two specific areas: The American Institute of Tribal Affairs should deal with upgrading tribal government, tribal courts, and tribal business management. The American Indian Institute of Indian Studies (located at the same place in the same plant which should be a converted existing Bureau of Indian Affairs boarding school) would engage in studies of a nature to allow a coordinated approach to research and to make available for early application the more important research findings and feasibility study results.

Specific legislation allowing private industry and business tax deductions for providing technical assistance to tribal groups.—The Department of Commerce should be given legislative authority to initiate and monitor a program of matching the management know-how and technical assistance of America's 300 biggest corporations, with the management and technical assistance needs of America's 300 or so Indian reservations. Tax deductions should be allowed on a schedule to be worked out considering factors of minimal and maximal rates per man-day of assistance and minimal and maximal numbers of man-days of assistance.

Even with all needed permissive legislation and needed funds available, the final problem of economic development on Federal Indian reservations will be a human problem with the related problems of communication, hopes, plans, and community aspirations slowing, halting, or preventing development.

PEOPLE AND PROGRAMS: THE INDIAN EFFORT IN THE DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

FOREWORD

The Department of Health, Education, and Welfare administers the extensive Public Health Service program for the provision of health services and the construction of health care facilities on Indian reservations. In addition, HEW has recently established on Office of Indian Affairs, the purpose of which is to assure that Indians are aware of, and full participants in, all of HEW's programs. In support of this objective, HEW is undertaking a program to train the Indians to assume leadership roles in programs serving them and a program to gather and disseminate badly needed statistical data on Indian economic and social conditions.

Introduction

Optimum economic development in American Indian communities is a process dependent on a healthy, well educated, and socially sound population. Consequently, the Department of Health, Education, and Welfare as the Federal Government's primary focusing agency for programs of human development, has a key role to play in supporting this process.

There are over 600,000 citizens who identify themselves as Indians, Eskimos and Aleuts (hereafter referred to collectively as "Indian"). Some are found in each State. About 400,000 reside on or adjacent to Federal Indian reservations, and in communities in Oklahoma and Alaska. These 400,000 people, for complex legal and historical reasons, bear a unique relationship to the Federal Government and can participate in its special Federal Indian programs. Another 200,000 Indians live on State reservations, mainly along the Eastern seaboard, and in towns and cities throughout the Nation. These 200,000 people do not have a unique relationship to the Federal Government, and do not participate in special Federal Indian programs. Place of residence and unique Federal-Indian relationships notwithstanding, all 600,000 of these people, as citizens, are entitled to participate in the full range of HEW's more than 200 regular programs on the same basis as all other Americans.

BACKGROUND

The Department's involvement with the problems of Indians is long standing. The Public Health Service in the 1920's began to assign physicians to work in the health service of the Bureau of Indian Affairs, Department of Interior. During the 1930's the predecessors of HEW's Social Security Administration and Social and Rehabilitation Services began to extend services to Indians who qualified for them.

HEW involvement with Indians and their problems was intensified during the 1950's. Responsibility for health services for Indians was transferred by congressional action from the Bureau of Indian Affairs to the U.S. Public Health Service on July 1, 1955, resulting in the establishment of the Division of Indian Health, now designated, The Indian Health Service. This development represented the Department's first program specially organized and operated for Indians. Later in the decade, additional legislation authorized construction of community hospitals to serve both Indians and non-Indians. Further legislation authorized construction of safe water supplies and sanitary waste disposal facilities for Indian communities and individual homes. Another milestone of the era was the extension of Federal Impact Aid for Education to include Indian children enrolled in public school districts.

The trend of HEW's broadening concern for the problems of Indians has been extended into the 1960's. Recent legislation which has increased the Department's services and benefits to the general public has had the effect of increasing services and benefits to Indians. For example, amendments to the Elementary and Secondary Education Act have made special service and aids available to Federal and other schools with Indian students. The Education Professions Development Act, the Vocational Education Act and the Higher Education Act, similarly, make it possible to put forth intensified efforts in Indian education. In the field of health, medicare and medicaid have been extended to thousands of Indians living both on and off Federal Indian reservations.

Thus, in recent decades, the potential for Indian growth and development through the programs of HEW and its predecessors has substantially increased. However, in the recent past, evidence has emerged which indicates that this potential was not being fully realized. A major constraint to this realization has been the traditional social, cultural, and geographic isolation of Indian people. Another major constraint has been the widespread, but inaccurate belief that Indian people could turn to the special Federal Indian programs for all services needed by the individual, the family, and the community.

Former Secretary of HEW, John W. Gardner, addressed himself to this unfullfilled potential at a meeting of tribal leaders, Kansas City, Mo., February 17, 1967. While there to discuss a White House Task Force recommendation that the Bureau of Indian Affairs be transferred from the Department of Interior to the Department of Health, Education, and Welfare, he stated:

> Wherever the major responsibility for Indian Affairs ultimately rests, you may be sure that my Department intends to throw its energies and resources toward solving the problems that Indians tell us are the real problems.

Although the task force recommendation did not come to fruition, the Department took definitive action to meet its commitment to the needs of Indians.

A thorough review of the Department's programs in relation to Indian needs was promptly undertaken. During the course of the review, HEW responsibility for Indian Affairs was officially assigned to the Office of the Assistant Secretary for Education in August 1967. Subsequently, this responsibility was transferred to the Office of the Assistant Secretary for Planning and Evaluation.

A charter setting forth responsibilities was developed and, late in 1967, the Office for Indian Progress, now designated the Office of Indian Affairs, was established. The purpose of establishing a departmental focal point for Indian Affairs was to assure that Indians are aware of, and full participants in all of HEW's programs, and when necessary, that the programs are combined and adapted to meet the Indians' special needs.

The office was charged with several broad areas of responsibility:

1. Developing Department goals in the provision of services to Indians, and securing coordination in the achievement of such goals by operating agencies.
2. Coordinating HEW research, demonstration, and action programs in the field of Indian affairs.
3. Reflecting the special needs of the Indian community, on and off Federal Indian reservations, in operational decisions within the Department.

The Department's strategy for meeting Indian needs more effectively and efficiently was developed around the above purpose and responsibilities.

ELEMENTS OF STRATEGY

The strategy was predicated, in part, on the Department's conviction that, in order for its programs and actions to be optimally effective and efficient relative to Indians, they must, in fact, take into account the ways in which these people perceive their needs and their ideas and beliefs about ways in which programs can be made appropriate to their unique social, cultural and geographic settings.

In essence, the elements of the strategy are:

That existing operating agencies and their established procedures provide the means for carrying out program and administrative actions to meet Indian needs.

That complementary and supplementary authorities, arts, sciences and funds of one or more individual operating agencies will be packaged in order that their cumulative effects, properly coordinated, can best meet Indian needs.

That operating agencies' resources will be concentrated in areas of intense need so as to maximize their effect.

The Deparment's actions in the field of Indian affairs have been guided by this strategy.

IMPLEMENTATION OF STRATEGY

DELINEATION OF INDIANS VIEWS

The first step taken in evolving a plan of action to implement the departmental strategy was a delineation of Indian views relative to their needs and HEW programs. This action necessitated a critical decision about selecting a method for delineating Indian views. The options open to the Department fell into three broad types:

1. Conducting massive surveys.
2. Holding workshops, forums, and similar hearings, and
3 Using available information and public records.

The value of surveys and of hearings and similar meetings was clearly recognized. The necessity for conducting such activities was questioned, however, because this had already been done repeatedly and recently for the broad spectrum of social and similar needs in the Indian field. Also, the advisability and feasability was questioned because Indian people were under the impression that they had already provided information about their views in the above mentioned surveys and meetings. Thus additional surveys and hearings would appear to be superfluous and would indicate that this would become another fruitless exercise.

The results of numerous surveys over the years are available. These, combined with tribal and intertribal government resolutions, correspondence, proceedings from a variety of Indian meetings and other Indian expressions, have yielded a clear picture of Indian views about their needs and the way they relate to Federal programs both on a trend and a current basis. Therefore, the decision was made to utilize this information in the important step of delineating Indian views.

An analysis of this information identified five broad areas of concern to which the Indians appeared to want Government agencies to direct special attention. These five areas of concern indicate that:

1. Quantities and types of services are variably insufficient or unavailable at levels required to meet needs.
2. Needed services are often reached only with great hardship due to distance and time required to reach places where services are available.
3. Opportunities to constructively participate in planning, operating, and evaluating programs aimed at meeting needs are inadequately developed. The Indians want to be of substantial support to the agencies working to meet their needs.
4. Understanding of Indians' cultures and related problems and circumstances on the part of service personnel is insufficient to promote optimum growth and development of client confidence in the professional worker and the services and service systems which he represents. The Indians feel that this high level of confidence is indispensable and deserved.
5. Kinds of available, accessible services sometimes are not optimally appropriate to needs of Indian individuals and communities.

These areas of concern provide a reasonable basis for the manifold and divergent programs of the Department to view their relationships to the needs of Indians.

AREAS FOR EMPHASIS

As a means of facilitating the consideration of Indians' views in the Department, the five broad concerns were recast as areas for emphasis. The areas for Department-wide emphasis are, broadly, to develop, extend, improve and implement mechanisms to—

1. Assure that HEW services and benefits are available to Indians in need.
2. Increase the Indians' accessibility to HEW services and benefits.
3. Expand the ranges and methods of Indian involvement in programs which serve them.

4. Increase the effectiveness of program personnel, and the effectiveness of Indians involved in program planning, operation, and evaluation.
5. Increase the appropriateness of programs, and program delivery and management systems, to the needs of Indians.

Thus, the stage was set for designing and implementing a plan of action for pursuing the responsibilities inherent in the areas for emphasis.

PLAN OF ACTION

The HEW plan for Indian affairs consists of one basic and two supportive components. The basic component is program development aimed at generating actions which will assure that the Department's services and benefits are delivered to Indian people in consonance with the areas for emphasis.

The first of the two supporting components represents a critically needed effort. It would provide necessary orientation and learning experiences for Indians who are ill equipped to assume leadership roles in programs serving them; and for those who serve, or are to serve Indian people.

The second supporting component would provide for gathering, storing, retrieving, and disseminating statistical data on Indian populations, their needs and services to meet needs. This information is critically needed for the planning, operation, and evaluation of programs.

PROGRAM DEVELOPMENT

A special mechanism was devised to serve as the foundation for the Department-wide Indian program development component. The central feature of this mechanism is the five areas for emphasis. It is closely attuned to the departmental planning and budgeting systems and cycles.

In March 1968, a booklet, "Improving the Quality of Life Among Indians," was developed which provides guidance to operating agencies for preparing their plans to make substantive progress in each of the areas for emphasis—see exhibit (I).

In the booklet, agencies were requested to set objectives, identify specific program actions which they proposed to take to reach the objectives, and to estimate funds required to carry out the planned activities. Also, they were requested to identify policy and administrative constraints to achieving objectives.

This initial effort provided the Department for the first time with program and management information about the applicability and adaptability of its programs to the needs of Indians. Also, for the first time on a Department-wide basis, many operating agencies, with widely divergent missions, authorities, regulations, and methods of operations, developed specific planned efforts to meet needs of Indians within a common context; that is, the areas for emphasis.

An ongoing effort was organized and implemented in order to identify policy constraints to program development within the context of the areas for emphasis. Many such constraints have been identified through this process. Among those which have been resolved, two stand out as crucial to furthering basic Indian program development insofar as they established or affirmed the entitlement of qualified

Indians for health and welfare services available to other Americans in need—see exhibits II and III.

TRAINING AND ORIENTATION

A concept was developed to give substance to the training component of the plan. Its basic feature is the establishment of a National Indian Training and Research Center.

In collaboration with a number of Federal departments, private groups and foundations, the Department of HEW laid the conceptual groundwork in the form of a working draft for this effort. Both Indian and non-Indian groups were called upon to contribute ideas about the needs and possibilities that should determine the character of the Center.

An all-Indian steering committee was formed. The 20 committee members represented a cross section of Indian America. They were invited to critically evaluate the working draft and to give guidance on the most feasible method of implementing the concept which it represented. This was accomplished during two separate working sessions.

A decision emerged from the committee's deliberations calling for the establishment of a nonprofit corporation, the National Indian Training and Research Center. Incorporators and a Board of Directors were elected from the Steering Committee and authorized to proceed with the implementation of the proposal.

STATISTICS AND RELATED DATA

The rudiments of a mechanism were designed in connection with the statistical and related data component. This component is still in the process of development.

Conclusion

The Department of Health, Education, and Welfare has designed a strategy aimed at assuring that Indians are aware of, and full participants in all of HEW's programs, and when necessary, that the programs are combined and adapted to meet the Indians' special needs. A plan of action has been devised to translate the strategy into meaningful program action. In developing the plan of action, special mechanisms and techniques have been constructed and employed. These mechanisms and techniques are subject to continuing evaluation and refinement in order to achieve full realization of the departmental strategy in the field of Indian Affairs.

The efficacy of the Department's strategy and its implementation will determine, in part, the extent to which the Indian populations become characterized as healthy, well educated and socially sound. Such populations are best prepared to contribute to the success of economic development in American Indian communities.

[Exhibits follow.]

EXHIBIT I

IMPROVING THE QUALITY OF LIFE AMONG INDIANS

GUIDANCE FOR PLANS IN AREAS FOR EMPHASIS AFFECTING INDIANS

By U.S. DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

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Introduction

American Indians * were present at the beginning of our country's development. Because of the shape of history, however, they have not shared fully in the benefits of the Nation's progress. Their levels of health, education, and related well being, as measured by a wide variety of indices, are among the lowest in America.

For many years the Buerau of Indian Affairs, Department of the Interior, was the sole Federal agency working with problems of poverty, poor health, and ignorance among Indians. Several decades ago, however, other agencies gradually became involved in Indian affairs. The predecessor of the Department of Health, Education, and Welfare was among the earliest of these. Today the Public Health Service—especially its Division of Indian Health, the Office of Education, the Social and Rehabilitation Service, and the Social Security Administration, are all closely involved. Many agencies of the Federal Government—the Department of the Interior, Housing and Urban Development, Labor, Commerce, Agriculture, and the Office of Economic Opportunity—provide a wide variety of services and benefits in response to Indians' needs.

Considerable progress has been made in helping Indians overcome their basic health, education, and social problems. However, in spite of progress, much remains to be done. For example:

1. Indian infant death rates have declined 41 percent since 1955. However, the Indian rate of 40 per 1,000 live births is still 12 points above the national average.
2. Indian life expectancy has risen from 62.5 years to 63.9 years since 1960. However, it is still over 6 years under the life expectancy as a whole.
3. Indians are attending school in ever-increasing numbers. However, nearly 60 percent have less than an eighth grade education, and the drop-out rate is 50 percent.

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* The term "Indian" includes Indians, Eskimos, and Aleuts.

4. Almost 100 industries have been encouraged to expand into Indian communities. However, the unemployment rate is almost 40 percent—10 times the national rate.

PROBLEMS

The Indians are well aware of the benefits resulting from the high quality of Department of Health, Education, and Welfare programs which reach them. They have expressed, however, through a variety of media such as tribal and intertribal government resolutions, conferences, special studies, and meetings with Federal and other Officials, problems to which, in their views, special Department of Health, Education, and Welfare service program attention should be directed. Some of the more frequently expressed problems have been grouped into several broad areas.

1. Quantities and types of services are variably insufficient or unavailable at levels required to meet needs.
2. Needed services are often reached only with great hardship due to distance and time required to reach places where services are available.
3. Opportunities to constructively participate in planning, operating, and evaluating programs aimed at meeting needs are inadequately developed. The Indians want to be of substantial support to the agencies working to meet their needs.
4. Understanding of Indians' cultures and related problems and circumstances on the part of service personnel is insufficient to promote optimum growth and development of client confidence in the professional worker and the services and service systems which he represents. The Indians feel that this high level of confidence is indispensable and deserved.
5. Kinds of available, accessible services sometimes are not optimally appropriate to needs of Indian individuals and communities.

These problems, recast as areas for emphasis, are shown in attachment I, along with program thrusts which departmental efforts concerning Indians will take.

POLICY

It is the policy of the Department to place special, continuing emphasis on reducing the problem areas cited above, through direct and supporting program and management actions.

It is the policy of the Department that its agencies will work closely among themselves and with other Federal agencies, State and local agencies, tribal governments and other appropriate organizations to the end of assuring coordinated intra- and inter-agency plans and collaborative actions aimed at reducing problem areas cited above.

It is the policy of the Department to direct its activities to Indians both on and off Federal Indian reservations.

IMPLEMENTATION

The Office of Education, Public Health Service, Social and Rehabilitation Service, and Social Security Administration should reexamine activity which took place in fiscal year 1967; was completed, is underway or planned for fiscal year 1968; and which is planned for fiscal year 1969, in order to:

1. Identify more precisely program content which has had, is having or will have a direct impact on Indian people as a target group, or as significant segments of larger target groups,
2. Identify resources (within the fiscal year 1968 appropriation and the President's budget for fiscal year 1969) and activities which can be directed or focused to address one or more areas for emphasis among Indians.
3. Set the stage for addressing intensified, expanded, and innovative efforts in each area for emphasis and reflecting these efforts in forthcoming plans for fiscal year 1970–1974.

These things can be done best within the framework of the departmental planning-programing-budgeting system. Instructions, forms, and related materials have been developed to that end.

Significant impact on Indian people can and does result from established efforts of individual DHEW agencies. This impact is strengthened in many instances, however, through the cumulative effort of intra- and interagency collaboration, as well as that of an interdepartmental nature. Thus, each DHEW agency should examine not only its own capacities to carry out programs within each area for emphasis, but, in addition, the potential for increased effectiveness of its efforts when coordinated with efforts of other parties working in related programs affecting Indians.

INSTRUCTIONS

PLANS IN AREAS FOR EMPHASIS AFFECTING INDIANS

This form is used for recording descriptions and data specific to a three or four digit program element, i.e., to one operating program of one organization, and one of the program categories to which it applies.

Program structure, codes, and definitions used in preparing the form are the same as those of the departmental planning-programing-budgeting system instructions, as revised, February 1968, except where otherwise noted.

Forms should be prepared for the lowest relevant organizational level—usually the bureau or division.

Box or column	*Instruction*
DHEW agency	Enter OE, PHS, SRS, or SSA.
Prepared by	Enter the name and organizational title of the person who coordinates preparation of the document.
Approved by	Enter the name and organizational title of the person who approves the document on behalf of the agency.
Date submitted	Enter the date on which the document is forwarded to OS.
(1) PPBS category code	Enter PPBS codes applicable to the agency at the following levels: OE, PHS—Third digit level. SRS, SSA—Fourth digit level. This is similar to the PPBS summary program and financial plan developed last fall.
(2) Areas for emphasis code	For each PPBS category code entered in column (1), enter codes of areas for emphasis within which the agency has taken, is taking, or plans to take action relative to Indians in fiscal year 1967, fiscal year 1968, or fiscal year 1969. Enter the number and NA (e.g., 3NA) for areas for emphasis within which the agency plans no action. (See attachment I for codes.)
(3) Objectives	Each agency should study each applicable area for emphasis (those not coded NA) entered in column (2) and the program thrust associated with it (see attachment I) to determine what it can do by the end of fiscal year 1969, alone or as a part of collaborative effort, and reflect its findings as one or more objectives. Each objective should specify, also, as exactly as possible, the amount of progress which is expected by the end of fiscal year 1968, as well as the situation as it was at the end of fiscal year 1967. Where feasible, objectives should include units of output as defined in instructions pertaining to PPBS form HEW 494 (Rev. 2/68), "Program and Financial Plan Output Data." *Constraints* In any cases where lack of, or inappropriate legislative authority is a constraint to addressing an area for emphasis, indicate the problem and its relationship to needed legislation. Do the same relative to administrative policy or any other constraint.
(4) PPBS activity code	For each objective shown in Column (3) enter PPBS activity code (two digits) for each type of activity involved in specific actions to be employed in achieving the objective.

Box or column	*Instruction*
(5) Brief description	For each Activity code shown in Column (4), describe in one or two lines the specific nature of each major action to be taken by the agency preparing the form. Collaborative efforts with other agencies or Departments should be cited, too. Work done under earned reimbursements should be so identified. Do not just name the PPBS Activity, e.g., Programmed Research. Rather, briefly describe what is to be done about Programmed Research during the plan period. Indicate plan period years during which each activity will take place.
(6) Responsible organizational unit	For each action shown in Column (5), indicate the organizational unit having closest immediate responsibility for undertaking or coordinating the action. This usually will be at the Division level. Identify the organizational unit by three digit PPBS organization codes.
(7) Program budget code	For each action shown in Column (5), enter six digit codes for funds to be tapped to support the action.
(8), (9), (10) Dollars	For each program budget code entry in Column (7) show total estimated funds to be used, by year of appropriation, in carrying out action during the specified fiscal years. Earned reimbursement funds should be indicated with a capital "R" preceding dollars shown, and the corresponding space in Column (7) left blank. FY 1967 data should go in Column (8), FY 1968 in Column (9), and FY 1969 in Column (10). Columns (11) and (12) are left blank.

Submission.—Requested materials, in duplicate, are due in the Office for Indian Progress, OS, Room 5721, DHEW North Building, by c.o.b., March 29, 1968

AREAS FOR EMPHASIS AND PROGRAM THRUST IN ACTIVITIES RELATING TO INDIANS, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Code	Areas for emphasis—Description	Program thrust
1	Availability to Indians of HEW service programs.	Develop, extend, improve, and implement mechanisms to assure that services and benefits provided through HEW supported programs are actually available to all Indians who qualify for them. Develop, extend, improve, and implement communications systems to assure that current information about services and benefits and eligibility requirement is meaningfully publicized among Indians.
2	Accessibility to Indians of HEW service programs.	Develop, extend, improve, and implement mechanisms for reducing time-distance gaps between residence of service population and points at which services are available.
3	Involvement of Indians in program planning, operation, and evaluation.	Develop, extend, improve, and implement mechanisms for expanding ranges and methods of Indian involvement at all levels of organization in planning, operation, and evaluation of programs affecting them.
4	Effectiveness of participation by personnel and Indians in service systems.	Develop, extend, improve, and implement mechanisms to increase effectiveness of service systems through improvement of the interrelationship between personnel dealing with Indians and Indians themselves, focusing on increasing non-Indian personnel understanding of Indians and their problems, and on increasing Indians' knowledge and skills prerequisite to their effective involvement in policy development and program guidance.
5	Appropriateness of programs to needs of Indians.	Develop, extend, improve, and implement mechanisms to stimulate and conduct research, development, testing, demonstration, and related scientific, statistical, and analytical activities aimed at yielding better ways of identifying potential Indian beneficiaries and their needs in health, education, and other areas related to HEW programs; and at yielding better procedures for planning organizing, directing, and evaluating high quality service programs for achieving identified program objectives related to reducing needs and improving services to Indians.

ATTACHMENT II

DHEW Agency ____________ Approved by ____________ Page ______ of ______ Pages

Prepared by ____________ Date Submitted ____________

Areas for Emphasis											
PPBS Category Code (1)	Area for emphasis Code (2)	Objectives (3)	PPBS Activities to Achieve Objectives								
			PPBS Activity Code (4)	Brief Description of Activities (5)	Resp. Org. Code (6)	Budget					
						Program Budget Code (7)	Dollars (1,000's FY)				
							19____ (8)	19____ (9)	19____ (10)	19____ (11)	19____ (12)

(3 68)

PLANS IN AREAS FOR EMPHASIS AFFECTING INDIANS

EXHIBIT II

Department of Health, Education, and Welfare,
Social and Rehabilitation Service,
Washington, D.C., April 18, 1968.

State Letter No. 1031

To: State agencies administering approved public assistance plans.

Subject: Eligibility of Indians, Including Those Living on Reservations, for Medical Care and Services Under Provisions of Social Security Act.

Questions have been raised which indicate States may not be clear as to the eligibility of Indians for medical care and services provided under the Social Security Act.

The following interpretations are aimed at resolving any uncertainty in this regard:

1. Indians shall have the same rights to receipt of medical services under a State plan approved under any of the public assistance titles of the Social Security Act, including title XIX, as do all other individuals in the State who meet the State's eligibility requirements.
2. In the case of a person who qualifies as an Indian beneficiary, the Division of Indian Health, Public Health Service, Department of Health, Education, and Welfare, may assume *residual* responsibility for medical care and services not included in the appropriate State plan, and for items that are encompassed by the plan, if such Indian chooses to utilize the Indian health facilities, without affecting the eligibility of the Indian under the State's medical assistance or other public assistance program.
3. Under the provisions of its approved medical assistance plan or other public assistance plans, the State agency responsible for such plans has *primary* responsibility for meeting the cost of the services provided therein for all individuals, regardless of race, who apply and are found eligible.

Sincerely,

Stephen P. Simonds, *Commissioner.*

EXHIBIT III

Department of Health, Education, and Welfare,
Social and Rehabilitation Service,
Washington, D.C., March 3, 1969.

State Letter No. 1062

To: State agencies administering approved public assistance plans.

Subject: Eligibility of Indians, Including Those Living on Reservations, for Assistance and Services Under Provisions of the Social Security Act.

Questions have been raised which indicate States may not be clear as to the eligibility of Indians for financial assistance and services provided under the Social Security Act.

The following interpretations are aimed at resolving any uncertainty in this regard:

1. State plan provision putting into effect titles I, IV, X, XIV, XVI, and XIX must be available State-wide to all eligible individuals. This includes State plan provisions added as a result of the 1967 legislation with reference to AFDC-Emergency assistance, unemployed fathers, and foster care.
2. Financial assistance through the Bureau of Indian Affairs, U.S. Department of the Interior (as well as medical assistance through Indian Health Service, Public Health Service, U.S. Department of Health, Education, and Welfare (see State Letter No. 1031)), is not available to individuals eligible for assistance from any other source.

Assistance, therefore from the Bureau of Indian Affairs, Department of the Interior, cannot be considered a basic resource in determining an individual's eligibility for a federally assisted program under the Social Security Act, since that resource is not actually available to persons eligible for the public assistance programs.

3. The Social Security Act provides that Federal sharing is available, under certain conditions when a child has been removed from his own home as the result of a judicial determination. The court or other judicial authority must have jurisdiction in such matters. Indian tribal courts and courts of Indian

offenses are courts of competent jurisdiction in this respect, and are so recognized by the laws and regulations of the United States.

Therefore, on Indian reservations, the authority of the tribal court to make such judicial determinations must be recognized by the State welfare agency as a proper authority for this provision of the Act.

4. This issuance does not replace or in any way modify State Letter No. 1031 which relates to medical assistance.

Sincerely,

STEPHEN P. SIMONDS, *Commissioner.*

MANPOWER PROGRAMS FOR INDIANS ADMINISTERED BY THE DEPARTMENT OF LABOR

FOREWORD

Indians participate in all the regular manpower training and employment programs administered by the Department of Labor. The Neighborhood Youth Corps and Operation Mainstream programs have been particularly popular on Indian reservations, and the results have been encouraging. Institutional and on-the-job training programs have produced mixed results, with subsequent job placement for enrollees sometimes presenting a difficult problem. Currently, various manpower programs are being coordinated into the Comprehensive Area Manpower Planning System, and efforts are being made to assure that Indians participate fully in this system and that they are represented on the various area, State, and regional CAMPS committees.

Introduction

While greatly increased efforts have been made by the Department of Labor to assist Indians to improve their employment situation, particularly in rural areas, a continued massive effort is still needed. Full employment of all American Indians may never become a reality in our lifetime. The present program being pursued in the Department of Labor, although a positive step in the direction of finding solutions to the "Indian problem," is inadequately funded to serve identified needs.

Indian population, according to the 1960 census, has been recorded at 552,000 persons. Three hundred thousand of these reside on Federal Indian reservations. The remaining 252,000 Indians reside in urban areas or on Indian reservations established through treaties with the States (thereafter under State jurisdiction). These State Indians are located along the east coast of the United States.

The Indian labor force—defined as all Indians of employable age neither in school nor prevented from working by retirement, ill health, or child care obligations—is estimated at 130,000 individuals. About 82,500 of these were at work in 1967. Estimates of Indian unemployment range from a low of 12 percent to a high of 74 percent, with an average unemployment rate of 38 percent. This is about 10 times the current national average unemployment rate.

In 1967, of a 10 percent sample of the total Navajo population, 88 percent of the men and 78 percent of the women age 14 and over, representing the Navajos actually in the labor force, 32.2 percent of the men and 51 percent of the women professed no knowledge of English, either written or oral. The average educational level (years of schooling) for American Indians was 5 years in 1966. Urban Indians tend to have higher academic achievement level and a slightly lower unemployment rate than the Indians from rural areas.

In an effort to prevent discrimination in the provision of placement services to minorities in the past, no records have been kept by State employment security officers on the employment status of Indians who reside in urban areas, or on State or Federal Indian reservations. This practice has been modified only recently to permit the collection of statistics on services to Indians and other minorities.

The tri-partite nature of Indian groups, i.e., (1) Federal reservation Indians, (2) off-reservation urban Indians, and (3) State reservation Indians, suggest diverse factors which have a bearing on Indian manpower programs. An example of the problem is provided by unenrolled members of the Cocopah Tribe in southwestern Arizona, numbering approximately 360, who live outside the urban communities but are not eligible for the services extended reservation Indians.

The Department of Labor has undertaken a number of manpower and employability programs to serve the disparate needs of the Indian groups in recent years. Program goals have been reoriented and delivery systems restructured to recognize the right of self-determination of the Indian people and to encourage their participation in planning their own destiny. Coordination of job training with economic development programs which create jobs on Indian reservations is being improved. Better ways of training of the Indian people for meaningful employment both on and off the reservation are being sought. A major thrust of the Department, over the past few years, has been directed toward assistance to Indians.

DEPARTMENT OF LABOR PROGRAM ACTIVITIES

Programs for Indians or other ethnic groups are not shown as separate and identifiable categories in the Department's budget; Indians participate in all the regular manpower training and employment programs administered by the Department. Following is a summary of the programs for Indians which can be identified for specific Indian reservations for fiscal years 1967 and 1968, and for fiscal year 1969 (through December 1968):

	Slots	Funds
Manpower Development and Training Act	4,380	$6,693,935
Neighborhood Youth Corps (in school and out of school)	19,488	12,777,097
Operation Mainstream	1,222	4,273,923

The impact of NYC and Operation Mainstream has been more immediate and apparent on Federal Indian reservations and consequently these programs have been extremely popular. The results of institutional and on-the-job training have been mixed; most problems have developed with placement of enrollees who have marginal qualifications.

Other Labor Department activities include:

(1) Two concentrated employment programs (CEP's) directly affecting Indian reservations, with $2 million obligated for each, one on the Navajo Reservation, Ariz.; the other in rural northern New Mexico.

(2) Two rural CEP's which are expected to serve a large number of Indians, although the projects are not specifically located on reservations. These are for a 10-county area in northern Wisconsin and a 10-county area of northern Minnesota. The latter covers several reservations.

(3) One hundred and ninety-eight positions have been established and funded to State employment security agencies to provide direct services to Indians.

(4) Indians are participating in the JOBS program in approximately 25 cities. New careers programs have been started on the Cherokee Reservation in North Carolina and the Navajo Reservation in Arizona. One project has been funded for $176,000 to establish a work incentive program for Indians eligible under AFDC in Nevada.

(5) The National Council on Indian Opportunity under the Executive Office of the Vice President has asked the DOL to look into the development of an apprenticeship program on Indian reservations where the construction being conducted on Indian reservations would provide the work opportunity necessary for apprenticeship training to take place. Presently the Arizona State office of the Bureau of Apprenticeship and Training is doing an analysis on the Arizona reservations and recommendations on how to develop an apprenticeship effort in the State for Indian reservations will be made shortly.

(6) The Department has cooperated with the Bureau of Indian Affairs through joint funding of training projects located at Missoula, Mont.; Roswell, N. Mex.; and Bismarck, N. Dak.

Delivery of Services

Adequate outreach services, testing, job orientation, guidance and counseling were unavailable to rural Indians for a number of years. Because of this neglect, funding of special programs for Indians is expensive—seemingly far out of proportion to their population base. Much is now being done, however, to improve utilization of available resources by providing the machinery which will make these services more readily available to Indians. Among steps taken within the past year to improve services to Indians are:

(1) A special assistant for Indian affairs has been appointed to serve on the manpower administrator's staff and to act on his behalf in all manpower matters relating to Indians. This position was filled by an American Indian.

(2) The Department of Labor is represented on the National Council on Indian Opportunity under the Executive Office of the Vice President by the special assistant for Indian affairs.

(3) Discussions have been initiated with the Bureau of Indian Affairs to identify the location and service areas for field staff outreach deployed by BIA and to compare this with positions allocated for Indian services by State employment security offices. The purpose is to find out whether any significant Indian communities are being grossly neglected and to recommend changes or reassignment of staff where necessary to provide service.

(4) Regional Manpower Administration representatives for Indian affairs have been designated in various regions of the DOL where concentrated Indian populations live and work.

(5) Steps are being taken to have Labor Department Indian representatives designated at State and local levels.

(6) In a separate but coordinated effort, the Department has recommended to the National Congress of American Indians that tribal manpower representatives be designated by the tribal councils as prime contact persons for the tribe with State and local employment security agency officials.

(7) The Labor Department has combined its efforts to give further attention to the Indian problem through the creation of an intra-departmental committee on Indian affairs to deal with Indian problems. It is chaired by the special assistant for Indian affairs.

The development of this structure which threads from the national office through regional offices to the State and local employment security offices, and the identification of specific persons within each tribal complex to deal with manpower programs round out the substructure which is necessary to go forward toward program objectives.

Through this organization will flow the information necessary to maximize the options for action available to Indian tribes and groups. The Federal assistance available will be put into sharper focus by the Indian tribes as they develop and implement their plans for overall economic development of their reservations.

JOINT PLANNING EFFORTS

Because of the changing character of national funding, varying statutory and administrative requirements, and conflicting agency jurisdictions, for Federal programs on Indian reservations, planning efforts have been thwarted and this causes problems in meeting objectives developed by Indians. Experience has dictated that short-range goals are necessary. Comprehensive long-range plans are critical to real growth on the reservations and must be given due attention.

Indian tribal plans must include a coordinated input from the several Federal agencies which now provide funds and services to Indians. Thus, the second step, after the development of the organizational structure to maximize services to Indians outlined above, is to develop a system which recognizes and uses options for planning and funding for Indian programs, through interagency coordination, with full participation of tribal groups. To this end, several agencies, including DOL, are cooperating in a joint effort with the Economic Development Administration which has developed a pilot program for 31 selected Indian reservation programs, specifically geared to meeting the select needs of a group of Indian tribes:

(1) EDA, OEO, and BIA have assisted the 31 tribes to formulate area action papers. Projects which are job producing projects have been identified by each of the tribes in each area action paper. The projects which have been identified have been assigned a priority listing by the tribes.

(2) Newly designated Regional Manpower Administrators' representatives for Indian affairs and members of the Intradepartmental Committee on Indian Affairs met with 16 reserva-

tions and groups in Phoenix in January 1969. The event was a Federal panel review of Indian Economic Development programs for the 16 Indian reservations and groups. This served as an orientation and workshop for DOL officials involved in Indian programs as an in-service training exercise for DOL staff.

(3) The Intradepartmental Committee on Indian Affairs plans follow-up on the Phoenix meeting.

DOL is now developing an annual program for Indian manpower services for the select Indian reservation program (see attachment 1).

Indian Participation in the Comprehensive Area Manpower Planning System (CAMPS)

Care is being taken to assure a tie-in between the planning efforts described above with those of other manpower programs and that these plans are in turn coordinated through CAMPS. Attention is also being focused on adequate representation for Indians on the various area, State, and regional CAMPS committees.

After careful study of the problems reported by Indians in securing adequate representation in the CAMPS process, four recommendations to the Interagency CAMPS Committee are being considered, to afford more complete involvement of Indians in the system which affects their reservation development programs. They are:

(1) Designation of Indian tribal representatives from each tribe participating in EDA activities to the appropriate State CAMPS committee, and adequate representation of these groups on a technical subcommittee of the State committe involved. This would insure that reservation manpower plans of training and services have been coordinated with other planning. Representation for Indian tribes on the State level as well as the region is vital because the reservations are considered political subdivisions of the State under EOA title I–B.

(2) Some secretariat positions assigned to the State CAMPS committee to provide technical assistance in the development and preparation of the Indian component of the CAMPS plans for State and region. Indian reservations are under Federal jurisdiction, and therefore are eligible for special Federal program grants and aids for Indians. The Indian tribes are required to develop their own plans under these programs.

(3) Indian representation on the *Regional* CAMPS committees primarily because their reservations and consequently their problems, transcend State lines.

The National Congress of American Indians during their executive council session, January 21–23, 1969, resolved that "whereas recent panel discussions have pointed out the difference between Indian and non-Indian values as to the importance of material possessions and the need of educators to understand these Indian matters in DOL training programs; that the DOL use such criteria for its education training programs other than the more material rewards so that these programs will be of greater interest to Indian participants." Behind this resolution is the conviction that Indians are culturally different more than culturally disadvantaged. In a society which is monoculturally oriented there are evidences that traditional methods need to be viewed in the face of bicultural characteristics and needs. Condemnation of the system alien to the Indians offers no solution in itself but may pave the way for some sound analysis.

The Indians intense desire to remain unchanged, to ignore the clock, to keep their customs intact, their heritage in high repute, and, their deep-seated attachment to their land, have augmented their fear that trusteeship by the Federal Government will be terminated, and have caused Indians to be wary of Federal Government program efforts. Prejudice experienced by Indians near reservation areas has contributed to defensive, negative attitudes toward instant outside help. Comprehensive planning by Indians, quality implementation by Indians, and effective followup by Indians, which have only recently become part of our policy in the conduct of Federal manpower programs on Indian reservations, must become the established pattern if we are to reverse the long years of distrust and bring about a climate for change which will make it possible for Indians to share more fully in a variety of employment opportunities.

Concentrated effort is being made to assist Indian youth in bridging the cultural gap without loss of identity. Attempts are being made to allow Indian people to make use of the best of both cultures while remaining firmly rooted in the Indian environment—if this is their choice—in order to lay the foundation for a healthier adjustment to the world of work than has heretofore been made.

However, any gains in this area will be lost unless the local Employment Service offices, which have Indian employment service staffs, recognize the role the Indian employment service staff must assume in relation to the tribal manpower plans and to be delegated the authority to act on behalf of the Employment Service organization so that tribal members will feel confident in turning to the employment service for assistance.

USDA PROGRAMS DIRECTED TO THE INDIAN COMMUNITY WITH ATTENTION TO THE RELATIONSHIPS AMONG USDA PROGRAMS AND THE HUMAN AND ECONOMIC DEVELOPMENT EFFORTS OF OTHER FEDERAL AGENCIES

FOREWORD

The Department of Agriculture operates no exclusively Indian programs, but the Department is giving increasing attention to problems of the rural poor and of rural economic development. Thus, emphasis on programs which are of benefit to Indians both on and off reservations is increasing. These programs include food assistance, rural housing assistance, forest service programs, soil and water conservation, and rural electric and telephone programs.

USDA Programs Available to the Indian Community

Although the Department of Agriculture operates no programs designed specifically for American Indian participation, most of our programs benefit the American Indian people. To the extent they constitute part of the target groups of programs, they benefit directly. As we continue to increase our attention to rural development and to the rural poor, programs of increasing benefit to Indians both on and off reservations have become available. A few examples of our more significant programs follow:

1. *Food assistance programs.*—Indians both on and off reservations have access to family food assistance programs. We expect that these programs will be available in the near future to low-income families in all parts of the Nation. Indians in needy families are included in this target group.

2. *Housing assistance.*—Loans to build or buy housing; to rehabilitate substandard homes; and to assist nonprofit groups in the development of rental housing in rural areas are available at sharply reduced interest rates to rural residents who are unable to find or afford adequate private credit. This program is being expanded sharply as part of the national housing program based on the Housing and Urban Development Act of 1968. It is available to Indians, as well as other low-income rural families.

3. *Forest Service programs.*—The Forest Service provides regular employment to around 400 American Indians. Last summer over 550 Indian youth were hired under the youth opportunity campaign. The Forest Service has also provided part-time firefighting employment for around 3,500 Indians in the Southwest and the Northern Plains area. Members of several reservations have participated in range management, land use, and technical assistance programs. Forest Service

research has recently designed plans for low-cost housing that will be of direct benefit to the Indian people. Over 100 Indian youth are enrolled in Job Corps Centers administered by the Forest Service.

4. *Rural electric and telephone.*—It is estimated that in September 1966, over 26,000 Indians were served by local electric cooperatives financed through the Department's Rural Electrification Administration. The REA, in coperation with OEO, HEW, and the Department of Labor, is presently developing a system that will provide electric service by the end of 1970 to some 67 small remote Alaskan communities.

5. *Soil and water conservation.*—Indians are major recipients of several of our resource conservation and development projects in Oklahoma, South Dakota, New Mexico, Idaho and Washington. It is estimated that our assistance under these programs in the coming fiscal year will be increased by about 10 percent over that of last year. Many Indians, particularly in the Southwest, are participating in the agricultural conservation program. To illustrate, about $1 million in cost-sharing funds has been made available in the past 5 years to assist the Navajo improve the productivity of their rangeland. This program will also be increased in fiscal year 1969. The Department is also cooperating with the Four Corners Regional Commission in developing the agricultural economy of that area.

6. *Water and sewer loans and grants.*—The Farmers Home Administration makes loans to associations and rural small towns for water and sewer facilities. For communities that are unable to repay the full cost of the loan, some grant funds are available to reduce the indebtedness to a level the community can afford. In designated areas, Farmers Home Administration loans are made in conjunction with grants from HUD, Interior, or the Department of Commerce. Legislation presently before Congress would change the present collateral requirement to facilitate loans for these and other purposes involving tribal corporations and tribal lands.

7. *Commodity programs.*—Many Indians participate in the Department's commodity programs, including the wool, wheat, feed grain, cotton and price support programs. In the event of natural disaster, the Department provides eligible farmers, including many Indians, with emergency livestock feed at reduced prices.

8. *Agricultural cooperatives.*—The Department is presently providing managerial and organizational assistance to several cooperatives having Indian membership.

9. *Other credit programs.*—The Farmers Home Administration makes loans to farmers and to rural residents who are unable to obtain credit elsewhere at reasonable rates. The loans are made for purposes of farm ownership, farm operating expenses, and small nonfarm enterprises.

10. *Extension programs.*—The Extension Service provides special programs designed to serve the particular needs of the Indian people in the specific situations where they live. These programs are concerned with improved family nutrition, improved housing and agricultural and community development. In fiscal year 1968, 84 extension workers provided training under contract to the BIA on specific reservations in 17 States having an Indian population of 313,592.

How USDA Programs Are Related to the Efforts of Other Federal Agencies

In the Department of Agriculture a substantial "outreach" effort is carried out to help rural residents, including Indians, gain convenient access to all programs of local, State, and Federal departments and agencies.

At the direction of the President, the Secretary of Agriculture is utilizing all the facilities of USDA field offices in the task of assisting other Federal agencies in making their programs fully effective in rural areas.

The principal mechanism is the technical action panel—a working group of representatives of all USDA agencies and interested local, State, and other Federal agencies located in a county or district. Over 3,000 of these groups are functioning at the county level in the 50 States and Puerto Rico.

These panels take the initiative in identifying problems of nonmetropolitan communities and rural parts of metropolitan communities which require the coordinated efforts of various departments and agencies for their effective solution.

At the Washington level, outreach is performed by the rural communities development staff which is responsible for identifying programs of other agencies and departments which will benefit rural citizens and for maintaining close liaison with the Washington level departments and the technical action panels in the field. An intradepartmental board with the Assistant Secretary for Rural Development and Conservation as chairman, is responsible for supplying local technical action panels the up-to-date information they need to perform their outreach function.

Two recent examples of successful TAP field operation are the work with the medicare program and cooperation with the Department of Labor in recruiting for manpower development programs. In both cases, the TAP's across the Nation effectively made available to many rural residents, who very likely would otherwise not have had it, information on important programs. Furthermore, rural residents who needed specific assistance in making application or following through on applications were helped.

This activity has been increasingly effective in helping rural residents gain access to non-USDA programs. The Department is continuing an extensive training effort to familiarize USDA employees with programs of other Departments and the particular needs of rural people these programs can best fill. USDA surveys indicate that TAP personnel are increasingly focusing their efforts and attentions on outreach and community development problems.

USDA Desk Officer for Minority Groups

In addition to the office of the Assistant to the Secretary for Civil Rights, the Secretary has designated the Deputy Assistant Secretary for Rural Development and Conservation as chairman of a departmentwide task force on problems of minority groups. One function of this officer is to represent the Secretary on the National Council on Indian Opportunity. In addition, this Deputy Assistant Secretary devotes special attention to the continuing problems of the Indian community and is charged with maintaining a constant review of agricultural programs to be sure that Indian benefit to the maximum extent possible.

ECONOMIC DEVELOPMENT IN THE AMERICAN INDIAN COMMUNITY; ROLE OF THE SMALL BUSINESS ADMINISTRATION

FOREWORD

Recent efforts by the Small Business Administration to encourage minority business enterprise have resulted in a substantially higher volume of lending to Indian-owned businesses. The SBA coordinates its lending program with the planning efforts of the Bureau of Indian Affairs and the Economic Development Administration. In addition to financial assistance, the SBA provides management assistance and technical training.

The Small Business Administration was created by Congress to insure free competition as the essence of the American economic system of private enterprise, and to strengthen the overall economy of the Nation. Through its 73 field offices, SBA offers financial assistance, management assistance, aid in obtaining Government contracts, counseling services and more than 500 publications covering successful practices in every small business field. These services are available, generally, to all small businesses throughout the country.

For many years, SBA has been particularly concerned with providing its assistance to disadvantaged persons. Our efforts have culminated in a bold new thrust to foster and encourage the development and expansion of small businesses among the socially and economically deprived segments of our population with special attention to small business concerns located in areas with high proportions of unemployed or low-income individuals, or owned by low-income individuals. The SBA effort to foster minority business enterprise involves all existing SBA authority and combines the efforts of private industry, banks, local communities, and the Federal Government, and is known as Operation Business Mainstream.

This new effort officially began on August 13, 1968, and has, thus far, been successful. In fiscal year 1968, prior to this new effort, 45 loans, totaling $1,296,880 were made to businesses owned by Indians. In only 7 months of this new effort (August 1968 through February 1969), these amounts were almost equaled with 42 loans for a total of $1,256,800 having been made. During this latter period the average loan size to Indian borrowers was $29,924 while the average loan size to all minorities was $21,813. There is every indication that the rate already achieved in the first 8 months of 1969 will continue and probably be exceeded.

Fostering minority business enterprise requires no new lending authority. It utilizes all lending, management and other assistance programs now operated by SBA. The program represents the current emphasis of the Agency with the additional factor of actively seeking assistance from the private sector of the economy. The SBA recognizes that the Federal Government, despite its vast resources, cannot, and indeed should not attempt to do the job alone.

Economic development among the underprivileged must be carefully planned if it is to accomplish its primary purpose, viz., bringing the economically deprived into the mainstream of our free enterprise economy. We realize that economic conditions vary around the country, between areas and cities, from city to city, between Indian reservations and surrounding areas. In any given area, the most immediate need may be for retail and service establishments to provide the residents of a deprived area with needed sources of goods and services. By assisting in the establishment of such small businesses by residents of the area, located in the area, the services are supplied and the profits to be made thereby are kept in the area and recirculated rather than being drawn off into more affluent surrounding areas. In other locations, however, more sophisticated labor-intensive businesses are needed to provide funds with which to purchase locally available goods and services. In addition, such light manufacturing and wholesale industries, owned and operated by area residents will provide a flow of new funds into the deprived area. The major thrust of economic development in deprived areas must be to encourage the inflow of funds from other more prosperous areas and to insure the availability of needed goods and services in that area, thereby keeping all or a good part of these new funds circulating within the area.

SBA's experience indicates that economic development in the American Indian community, as with all economically and socially disadvantaged communities, requires a special effort to—

(1) Seek out potential entrepreneurs and existing ones that wish to, and can successfully expand;

(2) Assist potential entrepreneurs in finding appropriate business opportunities; and

(3) Help provide the needed capital and management and technical training.

Outreach Efforts

To accomplish the first two items above, the agency must be knowledgeable about the communities involved and their inhabitants must be aware of the programs offered through SBA.

SBA is basically a resource agency, not a planning one. Once the decision has been made to start a new business or expand an existing one, SBA can provide financial and other assistance. However, we do actively assist those groups, both public and private, that exercise an economic planning function. For the most part, our assistance programs are wholly decentralized with operating authority vested in our 62 regional offices. Recognizing the diversity of local problems and local priorities, our regional office personnel have been encouraged to, and in fact do maintain close liaison with relevant planning groups. Our personnel meet on a regular basis with cognizant BIA personnel, EDA personnel and tribal officials. We also maintain a close working relationship with State development agencies and intertribal groups.

The primary purpose of these close contacts is to inform the knowledgeable planners and the representatives of the economically deprived areas of the assistance available through SBA and the requirements that must be satisfied before such assistance can be forthcoming. An additional benefit of such liaison is the fact that any request for assistance resulting from these planning sessions will be processed by an office that is aware of the background of and the need for the enterprise as well as the aspirations of the community and the individuals involved. In this manner, we can assist and encourage proper economic planning and be sure that the obstacles as well as the benefits are understood and have been considered in proper perspective.

Although our offices are located in urban areas, we have participated in meetings, conferences, briefings, and similar gatherings in any location where our assistance has been requested and where it appears appropriate. When the demand warrants it, we have established regular time periods on Indian reservations and elsewhere when a loan officer is present to answer all inquiries, and assist prospective borrowers in their dealings with SBA.

Specific SBA Programs

As a general rule, members of economically deprived groups lack both the needed capital to become small businessmen and the management and technical expertise necessary to be successful as entrepreneurs. Indian reservations are not generally located in proximity to sizable urban areas and are not routinely serviced by major banks or other financial institutions. The proper business climate that is part of the environment found in many urban and rural areas is woefully lacking on reservations. Although the will to succeed in business may be present, the drive will be wasted without proper financing and management and technical assistance.

Financial Assistance

SBA has three financial assistance programs that are particularly applicable to economic development in Indian areas; the Regular Business Loan program (RBL), the Economic Opportunity Loan program (EOL), and the Local Development Company program (LDC). These are all loan programs whereby SBA can loan money to, or guarantee loans by banks and other lending institutions to small businesses. With the exception of LDC's, the business must be organized on a profitmaking basis and financing must be unavailable on reasonable terms from other sources. The loans cannot be used for certain purposes, viz., to finance speculation, certain amusement or recreational facilities, newspapers, radio or television, gambling, relending or investing, agriculture, etc. And most importantly, there must be reasonable assurance of repayment of the loan.

Recently, relaxed criteria have been established for the RBL program to bring such loans more in line with the EOL program. The maximum loan to any one business under EOL is $25,000, under RBL, $350,000. These loans are for long terms, generally providing for amortization over a period of 10 years. For new businesses, a private equity injection of 15 percent of the amount of the loan requested is generally required. However, loans can be and have been made with smaller private equity injections where the circumstances warrant. The private equity injection can be in the form of cash, assets, or loans, provided the loans are subordinated to the SBA debt.

The LDC program is particularly applicable to assist Indian economic development. It affords the community an opportunity to establish industrial parks, shopping centers, and similar multibusiness developments as well as to provide aid to small businesses. Twenty-five or more citizens may form an LDC either as a profit or nonprofit corporation, whose basic purpose is to benefit the community involved by placing a new business (or keeping an existing one) in the community. SBA may lend up to $350,000 for each small business to be aided, for up to 25 years. On Indian reservations, the LDC must provide only 10 percent of the cost of the project for each identifiable small business. Funds may be used for plant construction, expansion, modernization, or conversion, including the purchase of land, building, equipment, and machinery. Simultaneously, SBA may make a working capital RBL or EOL loan to the independent small business. The advantages of the 502 program in economic development in Indian areas is self-evident. It is a program specifically designed to support community initiative, foster economic development, and create employment through new industries.

Other SBA financing programs, such as displaced business loans, lease guarantees, and small business investment companies may also make a substantial contribution to economic development of Indian areas in particular situations.

It should be noted that SBA's emphasis has been on guaranteeing loans by banks rather than on making direct loans. SBA can guarantee up to 90 percent of a bank loan under the RBL and LDC programs and up to 100 percent under the EOL program. By using this method, a small business becomes accustomed to dealing with banks and can reap the benefits connected with an appropriate bank relationship. Additionally, the bank can acquire a new customer and provide it with the full range of bank services, helping it to assume a competitive position in our economy and lessening the business' reliance on the Government. These positive factors together with considerations of governmental priorities and the enormous capital needs of the economically underprivileged have caused SBA to rely on its guarantee program rather than on its direct lending program.

Unfortunately, there are few banks doing business on Indian reservations and there has been a marked reluctance on behalf of many nearby banks to make loans on Indian reservations or to individual Indians. While recent Government and private efforts under Operation Business Mainstream have resulted in greater bank willingness to make loans in the area of Indian economic development, the flow of these funds is still not sufficient to meet the demand. Reasons given by banks for their reluctance to participate with SBA include the expense of servicing high-risk small loans to Indians and also, the fact that the Indian's best asset, his land, is unavailable for use as collateral in seeking bank loans. This matter requires serious and immediate attention. Perhaps consideration should be given to establishing a national Indian bank where tribal funds, trusteed funds, and even private funds could be channeled into SBA and similar lending programs.

MANAGEMENT ASSISTANCE

The lack of management and technical training of Indians presents an equally serious obstacle to economic development. Without such training, businesses are generally doomed to failure, even if provided with adequate capital. SBA's management assistance programs, including individual advice and group instruction, are aimed specifically at strengthening small business and improving the management capability of small businessmen.

Assistance on an individual basis is provided both by SBA employees and by SCORE (Service Corps of Retired Executives). SBA specialists make periodic visits to many remote communities to provide assistance to businesses on problems of marketing, accounting, product analysis, production methods, and research and development. SCORE provides expert advice of retired, successful businessmen to all businessmen who might otherwise not be able to hire experts to help them with their business difficulties. This service is voluntary by SCORE personnel, and is free to SBA, except for direct expenses.

On a group basis, SBA has sponsored and cosponsored conferences, workshops, and clinics for existing and potential small businessmen. Many of these programs are aimed at prospective small businessmen and deal with matters of importance to them, such as capital requirements and sources of financing, forms of business, organization, location, and so forth. In addition, SBA distributes many publications of general interest to prospective small businessmen, and publications which deal with specific management problems.

While these programs all contribute to supplying needed management expertise, they have not been able to compensate for the lack of business background prevalent in so many Indian communities. SBA's resources are insufficient to overcome this major obstacle. The voluntary SCORE program has not filled the gap due mainly to the distances involved and the absence of SCORE chapters in proximity to Indian communities. Other government agencies, notably the Economic Development Administration, have addressed themselves to this problem, but even the combined effort has not alleviated it.

Although the existing statutory authority appears adequate, the available resources do not permit measures sufficient to adequately cope with this problem. In this instance, private sector participation could close the gap. A VISTA-type volunteer program of experienced business or professional men, or voluntary donations of professional, management, and technical personnel time by private business organizations or groups should be fostered. Private industry, by its business success, has demonstrated its technical and managerial expertise and should be encouraged to share its knowledge, on a direct one-to-one basis, with less fortunate elements of our society.

PROCUREMENT ASSISTANCE

Each year the Federal Government does billions of dollars worth of business with private companies. The SBA helps small businessmen obtain a share of this Government business. Specialists in our field offices counsel small businessmen on prime contracting and subcontracting. They advise on which Government agencies buy the products or services supplied by a small business, guide the business in having its name placed on appropriate bidders' lists, help the small business to obtain drawings and specifications for proposed purchases, and assist in other ways.

The Government-wide "set-aside" program has helped this effort considerably. Under this program, the major Government purchasing agencies voluntarily set aside contracts or portions of contracts for small business. To augment this unilateral action, SBA has its own representatives stationed in major military and civilian procurement installations. They recommend additional set-asides, provide small business sources to contract officers, assist small concerns with contracting problems, recommend relaxation of unduly restrictive specifications, and so forth. SBA periodically checks the effectiveness of small business programs administered by procurement activities.

The fact that a small concern may be the low bidder on a Federal contract does not insure that it will in fact receive the contract. The contracting officer may question the low bidder's ability to perform the contract. In such cases, the concern may ask SBA for a "Certificate of Competency" (COC). Before a COC is issued, SBA specialists make an on-site survey of its facilities, management, performance record, and financial status. If SBA concludes that the company has, or can obtain, the necessary credit and productive capacity to perform the contract successfully, it issues the COC. The small business is then awarded the contract.

Subcontracting on Government procurements also offers an excellent opportunity for small business. SBA develops subcontract opportunities for small businesses by maintaining close contact with prime contractors and referring qualified small firms to them. We work closely with the largest contract-awarding agencies: The Department of Defense, General Services Administration, NASA, Atomic Energy Commission, and others. Under regulation established by these agencies, Government prime contractors must give small concerns an adequate opportunity to compete for subcontracts.

Under the Small Business Act, SBA also has authority to act as prime contractor on Government procurement contracts and may then subcontract with small firms which may be owned by economically deprived individuals or which will provide jobs for the hard-core unemployed. If necessary, labor training funds can also be utilized in this effort. The object of this program is to train unemployed people in depressed areas in skills which are salable in the normal labor markets. In the case of business owned by Indians or other deprived individuals, SBA seeks contracts for goods and services with continuing requirements and contracts that will enable the small business to raise its management and technical expertise to the level where it will be able to successfully compete in its chosen industry independent of direct SBA assistance.

This program, known as the 8(a) program, is being implemented in cooperation with the private sector. American industry is being asked to put all its expertise and all possible resources and energy behind this effort, and already there has been a gratifying response from numerous major corporations.

In addition to Federal Government procurement, there is enormous potential for small business in procurements by State and local government. Although SBA has no statutory authority in this area, many of our regional offices have made their local governments aware of the potential benetfis to underprivileged individuals and underdeveloped areas of awarding procurement contracts to small business owned and operated by, or employing such individuals or located in such areas. This potential market for goods and services produced by or in Indian communities should be exploited to the fullest extent possible.

FUTURE EFFORTS

Minority business ownership will continue to be a major emphasis of SBA. The agency will increase its efforts to encourage new small business enterprises and upgrade existing ones owned and operated by socially and economically deprived individuals. In those regions with substantial Indian populations or where reservations are located, major emphasis will continue to be placed on whatever assistance we can provide to Indian entrepreneurs, potential and existing, in cooperation with all other cognizant groups, public or private. The successes of the program during its relatively short existence and the cooperation which has been generated from other Government agencies, the financial community, and private industry have encouraged our efforts. Of course, improvements need to be made, new ideas and programs must be encouraged. The 8-month existence of the program to put minorities in business has been marked by constant innovation and change to meet particular problems of economic development among Indians and other underprivileged groups.

In recent months, we have witnessed a marked increase in efforts being made to coordinate economic development programs for Indians. We applaud these efforts and will continue to support them to the best of our ability. Because our basic function is as a resource agency rather than planning agency, until recently we have not been in the mainstream of this coordinating effort. We feel, however, that it is essential and should be bolstered.

It should also be recognized that coordination is necessary both on the national and local level. Major programs and goals should be interphased at the national level, particularly including detailed information as to the specific goals and programs of each agency involved in this effort. Hopefully, this exchange of information will permit the planners to identify necessary areas that are being ignored and areas of overlap and duplication between agencies. Once identified, remedial steps can be taken.

It would not be appropriate, however, to impose strict program operation and inflexible instructions, even in the area of coordination, from the national level. Policy and guidelines must be flexible. Conditions and circumstances differ from State to State, from city to city, and from reservation to reservation. Coordination at the local level by field personnel should be encouraged.

The key feature of a coordinated economic development approach in Indian affairs must be adaptability. The approach must be dynamic, not static. In this manner, the Indian community can be assisted in its attempts to reverse the trend of decay, and the American ethic of equality will have a practical and visible meaning to the Indian community and to individual Indians. Given an opportunity and help from the Government and from the private sector, the Indian can join the economic mainstream of our society.

[Appendixes follow:]

APPENDIX I

Correspondence between the Commissioner of the Bureau of Indian Affairs and the Small Business Administration:

U.S. **Department of the Interior,**
Bureau of Indian Affairs,
Washington, D.C., September 6, 1968.

Hon. **Howard J. Samuels,**
Administrator, Small Business Administration,
Washington, D.C.

Dear Mr. Samuels: Your new program, "Project Own," has just come to my attention. Although it is described in terms of serving the needs of the urban inner core, I am confident that you intend also to include Indians in its goal of increasing the number of business enterprises to be owned and operated by members of minority groups.

Indian areas need business enterprises owned and operated by tribal residents as desperately as any urban slum. Although our program of industrial development has been in operation for over 10 years and has to its credit today a total of more than 100 enterprises, employing over 4,000 Indians, much remains to be done. In recent months we have been giving special emphasis to the development of entrepreneurial franchise operations on the reservations. We welcome the opportunity offered by your agency in the form of loans to finance franchise operations and other small businesses.

So that our two agencies may explore the most effective means of assuring the inclusion of Indians among the economically disadvantaged groups benefiting from "Project Own," please let me know whom on your staff we may contact.

Sincerely yours,

Robert L. Bennett, *Commissioner.*

Department of the Interior,
Bureau of Indian Affairs,
Washington, D.C., September 12, 1968.

Hon. **Robert L. Bennett,**
Commissioner, Bureau of Indian Affairs, U.S. Department of the Interior,
Washington, D.C.

Dear Mr. Bennett: Administrator Samuels has asked me to reply to your letter of September 6, 1968.

Your point that Indians should be included in the goal of increasing the number of businesses to be owned and operated by members of minority groups is well taken. The Administrator wholeheartedly agrees.

In announcing the program, Mr. Samuels pointed out that SBA would not use a set formula for every area of the country, but would vary its approach from community to community, not only in urban areas but also in rural areas having high proportions of unemployed, low-income, or disadvantaged individuals.

The opportunities under "Project Own" will be available across the country through our 77 field offices. In a limited number of locations, it is our plan to establish Minority Entrepreneurship Teams, with personnel to be stationed in the heart of the disadvantaged area (urban or rural). However, the absence of such a Team in a given location will in no way deny the benefits of the program to that location.

We welcome your suggestion that our two agencies explore together the most effective means of assuring the inclusion of Indians among the beneficiaries of this program. Please advise your staff to communicate with the undersigned to arrange a meeting. My telephone number is (code) 128–7267.

Sincerely,

Murray W. Kramer,
Acting Director, Office of Operations Development.

APPENDIX II

The following are excerpts from recent reports by SBA field offices concerning their involvement in economic development in the American Indian community:

General

The experience on these loans has been quite satisfactory. A few have been slow in making payments, but this is primarily due to weather conditions which adversely affect certain operations in this area. Very few have ended in liquidation. At present there are several small proposals that are being developed. (*Wisconsin*)

There appears to be a good future for SBA aid in the American Indian community, but it also is evident that qualified capable businessmen may be lacking to carry out the daily operations. Some consideration should be given to an SBA program to provide aid to tribe-owned and operated businesses. This may be a future SBA lending program. (*California*)

We have found that programs progress much more successfully when cleared through the proper "Tribal Council officials" and believe valuable data in regard to applicants—both pro and con—can be developed through these sources. Without the cooperation of tribal officials, our loan programs in these communities could be disastrous. (*South Dakota*)

There was a recent flood in Marietta, Washington, which is an Indian village. We immediately called upon the Leaders, made a survey of the damage, had it declared a disaster area, and made 14 disaster loans to repair some of the damage to their homes, furniture and fishing gear. SBA was the only Agency, except the Red Cross, active in assisting the tribe in this flood disaster. In addition, it turns out that the tribe had some problems which would require the services of a lawyer beyond any authorities of SBA. Arrangements were made through the Seattle Bar Association for an attorney to be delegated to assist them in clearing title to some land they were unable to use due to the title being clouded by a faulty transfer of the land more than a 100 years ago to the Tribal Chief as an individual rather than to the Tribe. They were very grateful for this assistance. In addition to the assistance under the disaster loan program, we have made three regular business loans to Indian-owned and operated businesses. (*Washington*)

We have found by experience that the "most good" can be done by establishment of industry. This provides employment for a relatively large group of Indians. (*South Dakota*)

One recent development of importance was the approval of a loan to Inupiat Arts and Crafts, Inc. of Teller, Alaska, a business corporation which resembles a cooperative. Its incorporators, stockholders, directors and officers are (except for one Caucasian) Alaska Eskimos. The members (or owners) are ivory carvers and producers of artifacts. The corporation will purchase raw materials and market finished products, and also provide for its members' use some larger equipment which could not economically be owned by any one of them. (*Alaska*)

The immediate prospects for loan activity (on the) reservations are not good. There has been little or no initiative on the part of the tribal governments. It is foreseeable that the example of the Mohawks . . . may impel the other tribes to some action with respect to economic development. We will continue to encourage and assist fully such effort. (*New York*)

Other Agencies

The Bureau of Indian Affairs' officials work closely with the SBA regional office and attend pertinent staff conferences at the SBA office. SBA personnel attend meetings at BIA and both agencies frequently travel together on joint projects for Indian economic development. The Regional Director serves on the Commission for the development of certain property owned by IDDA (Indian Development District of Arizona). (*Arizona*)

We maintain close relationship with the Tribal Councils and the BIA. Banks are often reticent to make loans on reservations. We are working to overcome this hesitation through our guarantee plan in 502, EOL, ME and 7(a) loans. We are making good headway in most states, except Montana where the old distrust is harder to dissipate than anywhere else. We believe that time and our continued efforts will bear fruit here also. (*Rocky Mountain Area*)

Personnel of our office have coordinated and worked with the Bureau of Indian Affairs; Office of Economic Opportunity; Economic Development Administration; Forest Service (USDA); Farm Home Administration; Manpower Development Training . . . We have worked with the following State Agencies: State Coordinator of Indian Affairs; the Governor's Office; University System; State Technical Services; Unemployment Compensation Commission, and Consortium located at the University of Montana. (*Montana*)

This office has worked closely with the Bureau of Indian Affairs in developing areas where we can be of assistance. We have attended and provided speakers at various Economic Development workshops sponsored by the Indian Community Action Project. We have attended and discussed SBA programs with special emphasis on EOL and Project OWN programs with Technical Action Panels. These panels are made up of various Federal, State, and local organizations who are in a position to disseminate information about the SBA and its programs. We have met with Reservation Development Coordinators and Tribal Councils in order to advance the availability of our program. (*Wisconsin*)

A good deal of confusion could be avoided if possibly a memorandum of understanding between SBA and BIA could be enacted. This memorandum clearly would explain BIA restrictions on financial dealings concerning Indian lands of various types and Tribal and individual Indian funds. (*California*)

We also work closely with the Bureau of Indian Affairs. There is an agency office on each Indian reservation and they have generally designated one person to work closely with SBA. They not only provide leads for us but also provide assistance in putting a loan package together. (*North Dakota*)

Outreach

In order to inform the American Indian community of the assistance available through the Small Business Administration, this Regional Office has arranged to meet with interested Indians at the various reservations. Originally, a specific day each month was allocated to each reservation. Because of the lack of attendance, this policy was discontinued except for three reservations. However, arrangements have been made that when we are aware of any Indian or group of Indians who are interested in what SBA has to offer, we arrange for the most appropriate SBA personnel to meet with these interested parties at a place most convenient to them. This is usually at the reservation. This has resulted in several meetings which, hopefully, will develop into a concerte financial or other type SBA assistance. In addition to these specific meetings with interested Indians, the regular circuit-rider interviews are held in areas, some of which are close to the various reservations. SBA personnel have participated in workshops sponsored by groups interested in the Indian community. As a result of these outreach programs, this Regional Office has provided financial assistance to 21 businesses operated by the American Indian. (*Minnesota*)

This office is operating with the Rural Alaska Community Action Program in presenting the SBA story to remote villages and with VISTA attorneys attached to Alaska Legal Services for assistance in preparing applications and presentations. (*Alaska*)

Management Training

The remaining and most serious problem with which we are faced at present is our endeavor to provide sufficient follow-up once the loan has been made. As mentioned above, the applicant-borrower is competent in his trade, skill, or, as the case may be, he knows his product. The problem he faces is lack of business management know-how. (*North Dakota*)

Time would not permit a detailed study of Manpower Training Act directives, however, as a general statement, we believe the criteria for providing training to Indians should be extremely liberal since one of our problems is in finding prospective entrepreneurs with training and experience qualified to manage a small business. (*Montana*)

The greatest problem now facing our Indian economic assistance program is to make management assistance available. Due to distance and rural aspects of reservations SCORE assistance is difficult to provide. Staff personnel in MA because of the varied demands on their time can allot only a limited amount to Indian entrepreneurs and reservations. For an office servicing the number of Indian loans and Indian people that this office does, it is suggested that a Management Assistant Specialist for Indians only be provided. (*Arizona*)

It is difficult to measure counseling results; however, we have made seven loans. One of our loan officers is currently counseling a Winnebago group in regard to a homecraft effort and another of our loan officers has interviewed a prospective retail food dealer. Several of our loans in Menominee County have been for the transportation of forest products. The Menominee owned sawmill at Neopit is the sole industry in that county. Emphasis has been given Menominee County since its members number approximately 2500 persons whereas the other tribal groups are quite small (Oneida 361, Stockbridge-Munsee 214). Other current efforts in process involve small service businesses, including barber shop, filling station and a retail full service store. (*Wisconsin*)

One disadvantage for implementation of the course in management has been the difficulty of communicating with these people in using only the English language for instruction. By using bi-lingual abilities of the chosen coordinators, we are of the firm opinion that we have found the solution to management improvement in the out-lying areas where this training is so sorely needed. (*Alaska*)

Banks

Since it is still difficult to get private lending institutions involved, a loosening of funds for direct loans on Indian reservations is vital in all of our lending programs. (*Rocky Mountain Area*)

All banks near or on Indian Reservations have been contacted, both personally and through writing by personnel of our office. In most cases, contacts with the banks have not been encouraging. The banks have not participated in any way with the loans that have been made to individual Indians and do not plan to participate under the active inquiries mentioned above. A suggestion has been forwarded by a Loan Officer of this office, that SBA guarantee small business loans made by Indian tribes. (*Montana*)

Some success in securing bank participation has been experienced. However, banks are 20 to 30 miles from the reservations, and since they are small, with limited personnel, these banks find it difficult to service this type of participation loan. (*Wisconsin*)

Currently a plan has been developed whereby the leading bank in Arizona has designated a bank officer to work with SBA on minority loans with SBA guarantees. These will include loans to Indians on and off the reservations. (*Arizona*)

In addition we have had some inquiries during our Outreach to the Northern Counties of Siskiyou, Humboldt, and Trinity. The major problem here is that the banks are reluctant to participate and, according to the Loan Officer, the loans are not of the EOL nature. (*California*)

502 Program

In 1968, ten 502 Local Development Company loans were made to individual members (SBCs) of the Makah Indian Tribe. These are fishing vessel enterprises designed to adequately equip Indians to fish competitively on a commercial basis. An important factor in these projects was an opportunity which allowed the Indian to operate in a natural environment in or near his community rather than displacing him to urban areas of unfamiliar competition. This project reached capability through the knowledge that certain tribal assets are available to individual members only through projects that are beneficial to the tribe as a whole, such as community projects. A whole new dimension of assistance is open to a tribe functioning through the Local Development 502 Program. (*Washington*)

The Development Company Assistance Program has been a prime vehicle in the Rocky Mountain Area in the economic development of the American Indian communities. We have approved eight loans to local development companies on Indian reservations to assist manufacturing firms to locate there. These firms have provided 607 jobs for American Indians. Typical of these is the loan made in F/Y 1968 to the Omaha Tribal Opportunities Corporation, Walthill, Nebraska. A plant was constructed for Omahaline Hydraulic Corporation, a subsidiary of Prince Manufacturing Corporation of Sioux City, Iowa. It will provide 80 new jobs for members of the Omaha Tribe. Similar projects are now pending in South Dakota and Montana, as will no doubt be discussed in the answers you will receive from the Regional Directors in those states. (*Rocky Mountain Area*).

Some of our projects have contributed greatly to the Indian economy. We have just recently approved a 502 loan to the Cannon Ball Development Corporation (a wholly-owned Indian development company). Cannon Ball is a small community located on the Standing Rock Indian Reservation. The small business concern to be assisted, Chief Manufacturing, anticipates employment of 20 to 25 Indians. The $25,000 loan will assist the small business concern in the manufacture of novelty and souvenir items. The product will be imprinted with the Sioux Indian Tribe emblem. (*North Dakota*).

ECONOMIC DEVELOPMENT OF THE AMERICAN INDIAN AND HIS LANDS

Position Paper of the National Congress of American Indians

FOREWORD

The National Congress of American Indians is composed of 105 Indian tribes, containing more than 350,000 American Indians, and providing services to an even larger proportion of the Indian population. In its position paper, the NCAI states that efforts to assist the American Indians to become economically self-sufficient—efforts which now date back more than 100 years—have been in large measure a failure. The severe poverty and deprivation in which many Indian people live today "almost defy comprehension." Particularly urgent are the problems of the smaller and poorer tribes which have been completely unable to institute programs of economic development. Recently introduced programs of Federal assistance have enabled some tribes to achieve a greater degree of self-government and economic independence, but, in general, this progress has been limited to those tribes which have had the funds necessary to employ adequate legal counsel and to support economic program planning. The NCAI sponsors programs designed to assist the Indian tribes with economic planning, to provide technical assistance in applying for Federal and private development funds, and to encourage intertribal efforts to find joint solutions to problems of a regional nature. With the help of a grant from the Economic Development Administration, the NCAI is currently undertaking to establish a National Indian Development Organization which would make credit available for economic development programs.

The National Congress of American Indians (NCAI) is the only private, national Indian-directed organization limiting its voting power membership to Indian tribes and individuals. Serving as the speaking voice of the American Indian people, we include within our membership 105 Indian tribes, representing over 350,000 American Indians, and we provide services which reach even more of the Indian population.

NCAI has pledged itself to an economic development policy which contains the following principles: (1) Self-determination by the Indian people in their quest for social and economic equality; (2) protection of Indian tribal and individual ownership of Indian lands and resources, and maintenance of tax-exempt status for income derived from such lands, and for the lands themselves; (3) maximum development of the human and natural resources of Indians with the assistance of the BIA and all other Federal agencies offering programs and services designed to relieve conditions of poverty among all Americans.

We have spoken out often on this matter of Indian self-determination with respect to the matters affecting the lives and destiny of Indians, and there has been much lipservice, but little real substance, given to this concept by the officials of the Government.

Far too often, we have found the Congress voting on Indian matters with little knowledge of our views, and with no sensitivity to, or understanding of, them. We cannot contend more strongly that Congress cannot legislate or otherwise establish a successful program of Indian economic development without significant Indian input, or without recognition that success in the final analysis will depend, not on what the Congress thinks is good for the Indians, but what the Indian thinks is good for himself.

For over 100 years, it has been the policy of the U.S. Government to assist the American Indian to become economically self-sufficient. In large measure, as the statistics which follow will reveal, this policy has been a failure. At the root of this failure is the fact that the Indian's goals and cultural attitudes have largely been ignored in the perpetuation of this policy. It has never occurred to the majority of those pronouncing this policy that many Indians may not want to swim in a mainstream they largely regard as polluted and that they should be free to refuse; or that there might exist an Indian culture, which not only rejects the materialistic value system of the White Man, but has positive values in terms of brotherhood, and preservation of one's environment, from which the White Man could learn, if he were willing to listen.

Let us dispel another frequently made, yet erroneous assumption; that there is a close analogy to be drawn between the economic problems of Indians and those of other minority groups, and that, therefore, the same solutions will apply. To be sure, Indians bear the same mantle of alienation borne by other minorities: this is a product of rejection and discrimination against them by the dominant culture on the one hand, and denigration by the country's educational system of minority group status and values on the other; so that, for perhaps one-third of the country's Indians, the urban Indians who have attempted to make it in the main economy, and frequently are found, as President Nixon has said, "confined to hopeless city reservations of despair," the problems are similar, if not identical, to those of other minority groups in urban ghettos. But, for the remainder, the two-thirds of the American Indians living on reservations, attempting to retain their cultural identity, the problems of economic development are substantially different. These differences arise not only out of the cultural heritage that we have mentioned; and the unique attachment to the land that it has created, but out of the trust relationship of the Indian to the Federal Government, and the tax-exempt, restricted status of Indian land, which many people would hastily forget was bought and paid for by the cession of close to 2 billion acres of Indian-owned land to the Federal Government.

All too often, Second Class Status in the dominant culture has been the sole alternative offered to starvation on the reservation. NCAI believes that a successful economic development program must, on the one hand, provide for the Indian who desires to leave the reservation and enter into the general economy, a fair-fighting chance and equal opportunity for success, while, on the other hand providing the opportunity for the reservation economy to develop, in ways compatible with its own cultural values, to a point where it is capable of self-support at a level which will provide an equitable share of the bounty of our homeland—the world's richest Nation.

Let us look for a moment at what the late Senator Robert F. Kennedy called "the cold statistics which illuminate a national tragedy and a national disgrace":

The average Indian income is $1,500 annually, which is 74% below the national average; his unemployment rate hovers around 50%, which is ten times the national average, and on some reservations reaches 70–80%. The average American Indians life expectancy is 10 years less than the National average.

Even more startling were the observations of author Stan Steiner, in his recently published book, *The New Indians*, in which he related statistics from a 1962–63 Government study of employment among tribal Indians. The statistics have not changed much. Let us look at them:

"* * * on the plains of the Dakotas, the Pine Ridge Sioux had 2,175 of 3,400 tribal adults unemployed (yearly family income was $105), the Rosebud Sioux has 1,720 of 2,996 unemployed (yearly family income, $1,000—though the tribe, 4 years later, estimated $600 was more accurate); the Standing Rock Sioux had 500 of 880 heads of households unemployed (yearly family income, $190) * * *.

"To the north, on the Blackfeet Reservation of Montana, the 'Permanent unemployment' rate was 72.5 percent. The yearly tribal income was 'less than $500 per family.'

"Down in Mississippi, on the Choctaw Reservation, of 1,225 adults there were 1,055 jobless. Unemployment rate: 86.1 percent.

"Where the tranquil and ancient Pueblos of New Mexico stood, seemingly impervious to the economic winds, there were 10,699 jobless out of 13,711. Unemployment among these, perhaps the oldest of the country's inhabitants, was 77 percent. The Hopis, too, those idyllic 'peaceful people,' had a less than idyllic unemployment rate of 71.7 percent.

"In the Pueblo de Acoma, the 'City in the Sky,' unemployment stood at 89.6 percent.

"In the mythology of the oil-rich Indians so credulously huzzahed by television comedians and popular legends, none are supposedly wealthier than the Oklahoma tribes. And yet, the Five Civilized Tribes reported an annual unemployment rate of 55 percent, and an annual income per family, including the fabled oil-lease payments, that came to little more than $1,200 * * *.

"Of 19,000 adult Indians in eastern Oklahoma, between the ages of 18 and 55, an estimated 10,000, or 52.6 percent, were unemployed; of the 10,000 jobless adult Indians, well over half received no unemployment insurance, or any other welfare assistance—whatsoever.

"So it went from tribe to tribe. Unemployment rates from 40 to 80 percent; incomes from $105 to $1,200.

"These are statistics neither new nor surprising. However, the mixture of the old poverty and the new Indians who have seen the material riches of the outside world, and who are angered and impatient, has created an explosive situation. 'If something isn't done, the young men may go to violence * * *.' "

At its 1968 25th Annual Convention NCAI made it clear that:

"The social and economic conditions of many Indian people when compared to that of the general population, almost defy comprehension. Adult Indians living on reservations are, as a group, only half as well educated as other citizens, their life expectancy is one-third less and their average annual income two-thirds less. Nine out of 10 of their homes are comparatively unfit for human habitation and their unemployment rate is several times above the national average."

It is time that these critical problems were faced and programs funded which will overcome them, without exacting a price so high that the status quo is preferable.

Although many significant proposals have been placed in the Congressional hopper which would, perhaps, improve the economic situation of the Indian, few of these have the support of the Indians. Members of Congress have often been frustrated by what appears to them to be the ultraconservatism of the Indians. And, to some extent, the Indian *is* afraid of change—chiefly because proposals for change emanating from Congress have, regardless of the language in which they were couched, usually been schemes to liberate the Indian from his land, and because the Indian desires to design his own program for change.

Linked to the preservation of Indian land rights is the whole question of termination. Nothing has been more threatening to long-range tribal planning than the hovering specter of termination. On the one hand, the Federal Government has talked of itself as a partner available to work with the Indians in economic expansion and future development; on the other hand, the Congressional policy of termination has lingered like a death sentence under constant appeal by the Indian for commutation.

To be sure, the Omnibus Bill of the last session, reintroduced as separate bills H.R. 6717, 6718, 6719, and 6720 in this session, was rejected by Indians in part because of objections to the way it was presented. But the real objections were and remain substantive:

For example, the proposed "Indian Financing Act" offers the Indian an important new source of credit, not unlike a Small Business Administration for Indians, but on an unacceptable condition that the tribes be authorized to mortgage trust land, or any other land to which the tribe has title, subject to foreclosure.

This is no solution to the difficult problem of finding a way to broaden the sources of available credit for Indians *without* requiring tribal assets to be subject to foreclosure. Under such legislation, the Indian would be worse off than he is now. For he is compelled to risk everything, with a high chance of failure, for a limited possibility of success.

The same bill contains authorization much sought after for tribes to issue tax-exempt bonds: but limits such issuance to industrial or commercial purposes while only non-tax-exempt bonds may be issued to provide entertainment, recreation or civic facilities, transportation facilities, or to supply electric energy, gas, water, or sewage disposal or other utility services to the tribe. NCAI sees no valid reason for this distinction. The authority to issue tax-exempt bonds would be a valuable stimulant to capitalization of these desperate needs of the Indian community, for it offers an easy way to bring in outside capital, at relatively low cost to the tribe. But this proposal has individual merits, and should be considered apart from the loan fund.

In large measure, the past 8 years have shown a great stride forward by American Indians in attaining a greater degree of self-government and economic independence. But, the extent of progress and programs has reached only a small number of Indian tribes. Generally, those tribes that have had the funds to employ adequate legal counsel, and that have had a significant income for use in program planning, have been able to move forward with programs funded by a variety of Government agencies.

As of December 31, 1968, there were 150 industrial and commercial enterprises established on or near reservations as a result of Indian industrial development programs; of these 140, or 93 percent, had been established since the beginning of 1962.

At the present time these enterprises have created approximately 10,000 new jobs, of which only 4,700 are held by Indians. If industrial development seems like a panacea to the problem of the reservation Indians, we remind you that in 1962 there were 10,699 unemployed Pueblos alone; and in 1968, there were approximately 45,000 Indians in the 14-to-21 age bracket.

For the industrial enterprises now in existence, it is projected that eventually these will provide a total of 15,000 jobs of which, it is hoped, 65 percent will be held by Indians. Twice, or even three times, this number of jobs will not solve the problem. And, at the same time that jobs are created, Indians must be trained for employability.

There are approximately 600,000 Indians living in the United States, and in recent years the Indian population has been increasing faster than among any other minority group. The Indian labor force numbers approximately 100,000 with the unemployment rate hovering around 50 percent, more than 10 times the national average. "Industrial development of reservations" has often meant economic exploitation of cheap Indian labor for the benefit of white capitalists, leaving in its wake sociological disaster. We should point out further that some reservations have frequently been unable to share in the expanded opportunities for community and economic development which have been provided in recent years. Not only do they lack the wherewithal to make their needs known, but they are frequently unable to meet matching fund requirements, or other strings, which limit development.

Among our other activities, NCAI has undertaken a program to assist the tribes which have not been able to begin programs on their reservations, with the hope that, in short order, they will be able to generate sufficient income as tribal bodies to plan and carry out their own programs and attain greater measures of self-sufficiency and self-government. Note, however, that our purpose is to strengthen tribes, not weaken them, as Congress so frequently has tried to do.

In general, the Indians who have been overlooked are in small Federal tribes or eastern non-Federal surviving groups. We do not believe that because Congress denies these Indians Federal recognition, they cease to be Indians. From our contact with these groups over the past several years, we believe that, with some technical and financial assistance, these groups can be placed on the road to total self-sufficiency. Indeed, they could be made totally independent in some cases with the financial assistance and expanded reservation or group programs to fit their immediate needs.

On the other hand, there are a number of instances of tribes so disconsolate, and dejected, and with such a feeling of general helplessness, that they must first be convinced that effort is worth making. It is a mistake to assume, as Congress frequently has, that progress will be easy of attainment, and that results must show up immediately if a project is to be continued. The very uncertainty of congressional appropriations, and vacillation in Federal programing has bred distrust among the Indians, and led to the failure of some potentially viable programs.

In years when there is a change of administration, these feelings necessarily multiply.

It has too often been the fate of Indian groups that Government agencies have tried to create "showcases" of gigantic programs of employment on reservations, when the need has been much simpler and more basic. We believe that the "shotgun" approach to community development has not paid off in the past, and we have no reason to anticipate sudden success in the future for this type of operation.

We have initiated a program of national scope funded by a Ford Foundation grant to zero in on the problems of small tribes and non-Federal surviving groups to work on the basic problems of the Indian community, as viewed by that community. Our orientation is directed to total community involvement and development, with primary emphasis on one simple goal—increase of tribal income and subsequent development of tribal assets with that increased income.

We are continually finding that there are specific legal, economic administrative and social problems that are hampering smaller tribes and particular Indian groups, which never come to the fore until we actually have contact with the Indian community concerned. If these groups are to make any significant progress in the years to come, someone must bring them into the picture of national economic and social development in the very near future. We believe this can be done, without sacrificing tribal values. Indeed, in most instances, it can be done only tribally.

NCAI, among its other goals, hopes to serve as a central clearinghouse operation, in economic planning and development among American Indians, supporting the efforts of member tribes to develop viable economic programs with technical advice and funding, by being a central agency with capabilities in these dimensions. As our staffing on separate projects increases, our capacity to play this role increases.

Our overall economic program evolves from three factors: First, the staff capabilities and funding of the organization, and its relationship with Indian leadership; second, the limited number of people in the Indian community familiar with the private enterprise money concept and economy, and the many intricate mechanisms it requires in economic planning; third, the shortage of socioeconomic data on the American Indians, which is generally regarded as a prerequisite base from which to establish sound and sensible economic design. Although the Bureau of Indian Affairs has been in the business, nominally at least, for many years, of economic development on Indian reservations, the Bureau itself has developed no meaningful and reliable statistics to serve this need. We are hopeful that the newly funded Office of Minority Business Enterprises in the Department of Commerce, through its Rural Division, will begin to amass and supply this data.

Because it is in the interest of efficiency and economic progress to maximize both the coordination of Federal interagency resources and Indian organization resources for economic development, we are in the process of expanding the scope and capacity of the NCAI Fund to make it the focal point and repository of nongovernmental funds allocated to assist the American Indian in the development and implementation of economic plans. We have thus been in a position to monitor grants to other smaller Indian organizations serving special needs. But the Indian community cannot meet its economic needs by itself; at best, we can hope to provide seed money or matching funds. The bulk of this effort must of necessity come from the Federal Government.

In both 1968 and 1969, NCAI has cosponsored two National Economic Development Conferences for 31 selected Indian Reservations, which were attended by representatives of major firms in the private sector. This program is funded by a separate grant from the Office of Economic Opportunity. The major aim of these conferences was to help tribes attract industry into locations within communities, in accord with the economic plans of such communities. The conferences also serve to give a major boost to the economic plans which have been endorsed or funded by NCAI.

In addition to the economic programs we have described, NCAI is involved in community planning activities among its constituent groups. We believe that no economic plan can succeed which takes into account merely the economic and industrial implications of a proposed activity, without considering the sociological implications as well—that is, the impact which the development of such a plan will have on the tribe itself. Too often in the past, such consequences have been heedlessly disregarded.

Where such implications are not considered, what may be a successful economic venture for a visiting industrialist, can turn into a sociological disaster for the tribe.

NCAI also provides technical assistance, in such diverse forms as interpreting the regulations of the BIA for tribes who do not understand them; helping tribes receive certificates of eligibility for EDA or OEO programs; providing legal research assistance with respect to Federal Indian Laws applicable to particular situations; providing practical assistance on the familiar problems of land consolidations; Law and Order Codes, program development—land leasing—credit unions, and other tribal enterprises; supporting and assisting the creation and maintenance of intertribal ventures to attack regional problems; and providing a referral service between tribes and appropriate private, State and Federal agencies, which can provide assistance with particular problems.

Our approach is to define specific areas of concern in community development, designating Indian groups eligible to receive assistance from the program. Tribal groups are asked to define and clarify immediate problems and long-range goals. Technical and financial assistance is available only until the group has reached the point where it has sufficient resources to begin programing and funding by itself. Then, program support ceases, thereby canceling out dependency upon the program for continued survival.

Financial assistance for accelerated community development consists of grants for capital improvements to enable tribes to overhaul community facilities and to provide matching grants "in kind" for programs; to assist unorganized communities to plan basic community organization; to enable Indian groups to employ professional service people in particular cases of need, as, for incorporation of enterprises, formation of credit unions, establishment of leasing programs or writing of tribal constitutions, and, for travel by tribal representatives to enable them to follow up on program applications, where necessary.

One priority area is the number of small tribes whose members are, for the most part employed, but the tribe as a governing body is too poor to begin a program of housing on a community basis; so, nothing is done. With some assistance in developing a housing program, and formulation of a plan to establish either a credit union or a tribal tax on the members, such a tribe could create housing for its people, with the program generating enough momentum to set up a basic community development program for the future. Once the program is undertaken, counselling and financial assistance can be provided to assist the tribe in building a basic tribal income to cover such future services as the members require. Such a tribe would then be, for all predictable purposes, self-sufficient.

Having waited in vain for Congress to approve a Federal Government endorsed, chartered and underwritten all-Indian Development Corporation, in accord with the recommendations of the Striner Report, NCAI has just obtained a substantial grant from EDA to study the feasibility of, and assuming a feasible method is found, to establish a National Indian Development Organization. Although the terms of the proposal require an organization to be established within existing law (if feasible), we will undoubtedly be seeking Congressional assistance to strengthen the significance of this organization. We see this as potentially the single most significant development in the field of Indian economic development. The need for a financial institution which can accommodate the unique requirements of the Indian for credit and other needs is quite apparent. To the extent that such an organization can be developed in the private sector under Indian direction, we think it will be the most useful. Some sort of Federal subsidization may well be needed, at least in the early stages, to make the organization feasible, and to that extent, we will turn to Congress for support.

In closing, we would like to remind you of the words President John F. Kennedy used in his inaugural address: "If a free society cannot help the many who are poor, it cannot save the few who are rich."

OKLAHOMANS FOR INDIAN OPPORTUNITY, INCORPORATED AND ECONOMIC DEVELOPMENT FOR NON-RESERVATION INDIAN PEOPLE

By WILLIAM G. HAYDEN*

FOREWORD

Oklahomans for Indian Opportunity was organized in 1965 to represent and assist Oklahoma Indians. Oklahoma has no Indian reservations, but it has by far the largest nonreservation Indian population of any State. William Hayden here describes how white settlement and statehood for Oklahoma were accompanied by white encroachment on Indian lands, causing the Indians to become an exploited and poverty-stricken minority. He criticizes current Federal programs for continuing to promote white-owned industries, which employ Indians at low wages. A primary objective of the Oklahomans for Indian Opportunity is to promote Indian ownership and control of local commerce and industry. The OIO has already assisted in the establishment of a number of Indian-owned small businesses. Other OIO activities include an Indian youth council, which helps young people to develop the skills and self-confidence needed for scholastic success, and a community action program which helps Indian people to take better advantage of the social services provided by State and Federal agencies. In addition to describing the numerous activities of the OIO, Mr. Hayden's article includes extensive historical and statistical material on the economic, social, and educational status of the Oklahoma Indians.

Introduction

Oklahomans for Indian Opportunity, Inc., is a private nonprofit corporation organized under the laws of the State of Oklahoma. In Oklahoma there are 67 tribes of Indians and over 25 official tribal organizations. There are no reservations in the State of Oklahoma. Estimates of the Indian population of the State range anywhere from the official 64,000 of the 1960 Census to over 200,000. At any rate Oklahoma has the second largest Indian population of any State, and certainly the largest nonreservation Indian population of any State by far.

Prior to the organization of Oklahomans for Indian Opportunity there had been no single organization that really crossed traditional tribal barriers to the point that Indians from many different tribal groups could be galvanized into successful group action. Traditionally, Indian people have been divided by tribal and clan factionalism. It is the philosophy of Oklahomans for Indian Opportunity that Indian people need to have the opportunity to go beyond these things—to work together to promote their own social, economic, and political well-being—regardless of whether they be tribal Indians, urban or rural; Pow-Wow Indians or church oriented; progressive Indians or what have you.

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There is a popular myth in Oklahoma that since there are no Indian reservations in the State then there is no "Indian problem." According to the myth, Indians are rapidly being assimilated into the dominant society. Since technically, Indians are eligible for the same services as non-Indians and are on an equal footing legally in society as non-Indians, there is a widespread belief among Oklahomans that there is no such thing as discrimination against Indians. But such is not the truth. The occasional Indian who does "make it" in the dominant society is used to prove that all the others could also if they would just "try." In many areas cruel stereotypes are still operative: "Indians are lazy," "The drunk Indian"; any kind of erratic behavior on the part of an Indian individual can be explained simply by saying, "Well, he's an Indian." And tragically many Indians hold these same attitudes about themselves. For many years a sign was prominently placed on the outside of a tavern near Ponca City; it said "No Beer Sold to Indians." It was only removed a few months ago, but for years Indian people passed that sign everyday. It still happens that indigent Indian persons with serious or emergency health needs are turned away from hospitals with the explanation that they should go to the Indian hospital. The Indian hospital might be 30 miles away or it might be 100 miles away and how are the indigent to pay for transportation?

For an Indian to live in Oklahoma means that practically every phase of his life is controlled by white people: the school, State and local government, the police, the courts, the hospitals, the public welfare social worker, his boss where he works—always white. The fact that there are no reservations in Oklahoma simply means that Indian people control that much less, that they have little that they can call their own, and that there are fewer places to retreat from white insensitivity to whatever way of life they choose to live.

One could go on and on and on listing problems and incidents that Indian people have endured but suffice it to say it was because of these things that Indian people brought Oklahomans for Indian Opportunity into being. In the summer of 1965 over 500 Indian people from around the State of Oklahoma gathered at the University of Oklahoma in Norman, Okla. and voted to organize Oklahomans for Indian Opportunity for the purpose of promoting the advancement of Oklahoma Indians on a statewide level. OIO is an Indian-dominated organization—of the 41-member board of directors, 36 are Indian people from around the State of Oklahoma. OIO currently employs 47 people; and of these, 35 are Indian or approximately 75 percent. In the past 3 years, with the help of funds from the Federal Government, OIO has inaugurated a number of programs designed by Indian people for the benefit of Indian people. Some of these are:

The Oklahomans for Indian Opportunity *Community Organization Program* has selected several target areas with a high percentage of Indian population. In each area an Indian person who has not had the benefit of professional training and who shares in the viewpoint of his fellow Indians has been employed to serve as an advocate for the Indian poor. These persons help Indian people take better advantage of State and Federal programs, take up their cause with agencies like the welfare department or the Bureau of Indian Affairs and they are frequently called upon to gather facts in cases of discrimination.

The Oklahomans for Indian Opportunity *Youth Program* has organized over 70 youth councils in schools with a large Indian enrollment. The public school system of Oklahoma is, by and large, unresponsive to the needs of Oklahoma Indian young people. The fact that some school systems have a 70- to 90-percent dropout rate for Indian students is ample proof of this. In most of these schools with large Indian enrollment very few Indian students participate in extracurricular activities. OIO seeks to organize youth councils for the Indian students in these schools. The youth council then becomes a vehicle whereby Indian students can develop self-confidence, skills of leadership, and self-expression. The youth councils themselves are organized on a statewide level and the Indian young people elect statewide officers. The popularity of this program can be seen in the fact that nearly 1,700 Indian high school students recently attended the OIO Statewide Youth Conference at the University of Oklahoma.

The Oklahomans for Indian Opportunity *Work Orientation Program* seeks to train and find employment for young Indian men and women in areas where it is difficult for Indians to find jobs. The OIO staff people attempt to convince local employers that Indian people are good employees. Frequently employers are reluctant to hire Indians because they have been led to believe that Indians are not dependable or are lacking in initiative in a job situation. The OIO Program seeks to break down these stereotypes while at the same time attempting to develop a realistic understanding and commitment on the part of the young Indians to the "world of work." In some cases persons have been successfully placed on the job that had previously failed in some other type of job training program. One of the best results of the program has been that many of the trainees have come to the realization that they really need more education and training and have gone back to school either to gain a high school, college education, or more specialized vocational training.

The Oklahomans for Indian Opportunity *Referral and Adult Education Centers* function in both Tulsa and Oklahoma City. Many Indian people have migrated to Tulsa and Oklahoma City from rural areas where the agency they were most accustomed to dealing with is the Bureau of Indian Affairs. Upon coming to the city many are ill-equipped to cope with the confusion of urban life and the maze of agencies that are supposed to give service to the poor. Through these centers OIO tries to help people get services and at the same time learn how to deal with public and private agencies set up to help them. Also, courses in consumer education, credit buying, etc., are available through these centers.

Oklahomans for Indian Opportunity has also promoted a number of regional training seminars for Indian people who are interested in learning ways of getting on school boards, boards of Community Action Agencies, running for public office and other forms of community involvement.

These are some of the programs that Oklahomans for Indian Opportunity has developed in the first 3 years of its existence. We believe that they all have long range significance for the development of the economic independence of Indian communities. Since this paper should more properly address itself to the economic conditions of Oklahoma Indians and since OIO has itself, in the last several months, begun an economic development program for Indians in eastern Oklahoma, the rest of this paper will deal with the OIO Economic Development Program now in progress.

In the fall of 1968, Oklahomans for Indian Opportunity received a grant from the Division of Research and Demonstration community action program, Office of Economic Opportunity. The purpose of the grant is to show that Indian communities and individuals can successfully plan, develop, own, control and operate their own economic enterprises. The initial target area covers a 10 county area of eastern Oklahoma which lies against the Arkansas border.

This area is the home of two of the so-called Five Civilized Tribes, these two being the Choctaw and Cherokee Tribes. Originally inhabitants of the southeastern United States, they were among the first Indians to come into contact with the European colonists on the eastern seaboard. Even before this time they had developed successful farming and other enterprises and had a well-knit and sophisticated social and political organization. After the purchase of the Louisiana Territory these people were forced, under escort of the U.S. Army, to undergo a long march with shocking loss of life to Oklahoma, the designated area for unwanted Indians. Treaties were signed promising them ownership and control of the land in eastern Oklahoma, and that their land never would be included within the borders of any State or territory of the United States. Between the years of settlement and the outbreak of the Civil War, Cherokees and Choctaws were allowed to live relatively undisturbed, and they established a complex system of schools, legislative bodies, and courts. Moreover, they prospered economically. All progress virtually ended when various factions in the two tribes allied themselves with the Confederacy. After the war, the Federal Government used this as an excuse to suspend all previous treaties, and Oklahoma became a State in 1907, over the strong objections of the Indians. Settlers came to Oklahoma in droves and the Indians ceased to play a dominant role in the affairs of Oklahoma. Unaccustomed to private ownership of land, they lost approximately 96 percent of the land they once owned. At this time the five civilized tribes together held over 19 million acres of land in eastern Oklahoma. Today, less than 700,000 acres remain in restricted status.

Over the past 60 years the Indians of the area have been so systematically exploited that today they have no voice at all in the economic decisionmaking of the area. In the entire 10-county area there are less than 15 Indian-owned business enterprises.

In a 1964 survey of nearly 2,000 Cherokee families, *not one* had a total family income of more than $2,999. In a similar study of 2,384 Choctaw families, over 86 percent had total incomes of less than $3,000. In both of these tribal groups the largest percentile fell below $1,000 total family income annually.

Understandably, the apathy and discouragement among Indians in eastern Oklahoma is extreme. Oklahomans for Indian Opportunity believes that if Indian communities are to survive in the nonreservation situation of Oklahoma—then Indian people must have the opportunity to gain control of the economic situations that most vitally affect their daily existence. That is they must have the opportunity to work in a business owned by themselves or by other Indians, they must be able to buy the goods they need in stores owned by Indians if they so choose, they ought to be able to borrow from an institution controlled by other Indian people, whether it be a bank, loan company, or credit union, they ought to be able to live together—to preserve what they think is worth preserving—to discard what is not—they ought to be able to live in any way they please. But there must be an economic base for such freedom. And really one cannot talk about freedom to be different in our society unless one recognizes the need for economic security of minority groups.

As U.S. Senator Fred R. Harris has pointed out, America does not mean the melting pot, it means the right to be different—that is American pluralism. Pluralism should include the concept that certain racial, cultural, or religious groups have a right to a certain recognition in our national social, legal, and political makeup. The American Indian, as the first American and in return for the forfeiture of the North American Continent and thousands of broken treaties certainly has a right to *special recognition* and *special treatment* from the national government *over* and *above* every other racial and ethnic group, without diminishing in any way the force of basic civil rights legislation in the land.

The Oklahomans for Indian Opportunity program attempts to do what few Indian programs have tried—to put Indian people in control of the basic situations that dominate their lives.

There have been many Federal programs to improve the lot of Indian people in Oklahoma. There is a widespread belief that Indians have inherent gifts of manual dexterity and innate abilities in hand-eye coordination—thus it is that some Bureau of Indian Affairs and even some tribal publications echo this racist nonsense. The main results of such misguided propaganda is to promote the belief that Indians are only capable of menial or physical tasks that do not require any brainpower. As has been stated above, tragically many Indians have the same attitudes about themselves.

The Bureau of Indian Affairs has a very powerful effect upon Indian people in Oklahoma. Many informed persons believe this has resulted in a general situation of dependency on Bureau of Indian Affairs' services and lack of initiative both on the part of the Bureau of Indian Affairs and Indian people. It would seem that there is a direct correlation between Bureau of Indian Affairs ineptitude and Indian lassitude.

Let us take for example the BIA industrial development program. There is a great deal of publicity about various industrial enterprises that have been lured to eastern Oklahoma through BIA auspices—no doubt the BIA has been, on occasion, extremely helpful in providing incentives for industry to relocate in an Indian area, however, this does not mean that the BIA effort has been even largely helpful to Indian workers. One of the most effective BIA lures for industry is the training supplement whereby up to one-half of the Federal minimum wage is paid for as long as 1½ years. This committee has already received evidence which indicates that training supplements for such long lengths of time are largely unwarranted. Indeed, the evidence seems to indicate that the average Indian trainee in eastern Oklahoma gains proficiency in a manufacturing skill in one or two weeks of training—not in 1 or 1½ years as the subsidies seem to indicate.

We think that the main inference from this is that BIA-OJT training subsidies are in reality interest free capital grants to lure industries to Indian areas. Considering the fact that industry relocates in eastern Oklahoma mainly to find a cheaper labor supply, this type of investment on the part of the Federal Government is not in the long run favorable to Indian people. Indeed, one might say that the effect of such programs is to maintain the exploitation of Indian people! Why else would the Bureau fund as many enterprises that provide bare minimum wage subsistence to Indian people.

It is our belief that such programs should be restructured so that they are geared to train Indian people to work in Indian owned and controlled enterprises. This is very simple—BIA money should not go to the enrichment of white people at the expense of Indian labor or ownership—Period!

Similarly, important economic development programs such as SBA, FHA, and EDA should be reformed in such a way that a certain minimum of loan or investment funds available must be devoted to authentic Indian projects. None of these Federal programs has a particularly sparkling record in these areas. At the same time it must be emphasized that Federal funds should not be all allocated to projects that tend to be literally "Human Zoos" for Indian people (projects in which Indian culture is prostituted with feathers and beads and snakes and curios and fake Indian art and craft, to be viewed by believing tourists). Any project financed with Federal funds which results in white people coming to look at Indian people is obviously an outrageous waste of taxpayer funds.

Federal funds (if directed toward Indian ownership rather than Indian employment) can make a significant change in the economic status of Indians in Oklahoma.

Federal funds are also used extensively for various types of vocational training for Indians. We do not feel that these programs have been too beneficial for Indians—not because vocational training is not needed but because of poor quality training and because too often the training is for a job that does not exist or is not needed. How many thousands of Indians have been trained—or even still are being trained as welders or heavy equipment operators—as if there were no other occupation for which training would be useful? It would seem that vocational training programs are set up by persons who are only concerned with the present needs of industry and not with the long-range employment needs of Indian people.

Without diminishing the need for quality vocational training we believe that the main emphasis should be placed on a vastly expanded educational grant program through the BIA. Thousands of Indian young people of high aspirations are being denied or discouraged from higher education because of the lack of sufficient funds for this worthy program. Moreover, this grant program should be expanded to cover the needs of Indian college graduates for advanced studies.

This then, is how Oklahomans for Indian Opportunity feels about Federal programs as they affect Indians in Oklahoma. The remainder of this statement will detail the OIO economic development program as it has unfolded over the past 6 months.

The initial target area for the program includes the following counties: Delaware, Mayes, Cherokee, Adair, Sequoyah, Haskell, Latimer, LeFlore, Pushmataha, and McCurtain. The area was chosen because of its high concentration of Indian people and its great potential for economic development.

The administrative offices of the program are located at the University of Oklahoma, Norman. The staff working out of Norman includes the director, deputy director, specialists in agriculture and animal husbandry, a business economist, a finance and accounting specialist, an attorney, a marketing expert and the secretarial staff. The field staff consists of five field representatives and 10 neighborhood workers. Each field representative supervises two counties in the project. A neighborhood worker is located in each of the 10 counties. Both field representatives and neighborhood workers live in the project area. Neighborhood workers were residents of the counties where they serve prior to being employed by OIO and are able to speak either Cherokee or Choctaw.

The rural development program is responsible to the OIO board of directors and works closely with the special advisory committee to the project. The involvement of OIO board members and the area's Indian people with the ideas and talents of low-income residents of the area is necessary for project success.

Regular training sessions are held for all staff members. Emphasis is placed on techniques for locating individuals and groups with business ideas, identifying needs and providing or locating services. Information on other OIO programs is provided in order to assure close coordination in the overall effort.

The first year of the project has been devoted to developing demonstration projects and establishing small businesses and cooperatives. Buying clubs in communities such as Wright City, Talihina, Little Kansas, and Briggs not only provide opportunities for economy in food purchases but are effective organizational vehicles for all types of community activity.

Regular meetings are being held in over 20 rural communities to plan community involvement in the project. The field staff also is working with OIO youth councils in the 10-county area.

All types of businesses and cooperatives are considered for project participation. Examples of project developed enterprises are the Cherokee Graphic Arts Co., Tahlequah; Bob Lee Dry's Service Station & Auto Repair, Salina; Steen's Grocery & Service Station, Grove; and Cherokee Floats, Inc., Briggs. The Cherokee Float operation is particularly interesting since it will provide summer employment for a large number of Indian high school students. The Lost City and Bell Feeder Pig Cooperative involves over 20 families in the specialized feeder pig industry with the assistance of the OIO animal husbandry specialist.

Over 30 other projects are currently under development or consideration. Projects under consideration are as diversified as fiber glass manufacturing, rough fish processing, fish farming, franchising operations, and laundry facilities.

Technical assistance is provided to existing businesses and cooperatives such as the Bull Hollow Arts and Crafts Cooperative with 30 member families. The project is actively participating in the development of the proposed Northeastern Oklahoma Community Development Corp. The NOCDC is a 15-county demonstration of the Community Self-Determination Act designed to stimulate community owned industry and enterprise. OIO will work with Indian people involved in the program.

Working relationships have been established with local businessmen, banks, tribal groups, Federal Housing Administration, Bureau of Indian Affairs, OSU agricultural extension, Small Business Administration, economic development districts, the State OEO office, and community action agencies.

As these small OIO sponsored businesses and organizations grow, they will serve as building blocks for a larger organization—an organization composed of residents of the area, truly representative of the Indian people of the entire area and concerned with improving the economic and social conditions of the Indian people of the area. By building a regional economic development organization dominated by Indian people OIO hopes that Indian people can continue to develop their own enterprises under their own control in the years to come.

This basically is what we are trying to do. We have a strong commitment to help develop Indian-owned enterprises. Most of these projects will be small and involve only a few people at first. Ultimately, however, we feel that larger more successful and visible operations can be developed with the help of other private and public agencies.

Finally, because the problems and situations mentioned in this paper are not unique to our 10-county project area I am including an addenda of historical and statistical material on the economic, social, and educational status of Indians throughout the various areas of the State of Oklahoma.

FIVE CIVILIZED TRIBES

The Cherokee, Chickasaw, Choctaw, Creek, and Seminole Tribes are known as the "Five Civilized Tribes." These tribes were conspicuous at first, at the time the white settlers (English, French, and Spanish) colonized southeastern United States, as a warlike people, and later for their cultural and economic development. When they realized they could not prevent the whites from settling, they began to enter into competition with them on their own terms. Within about a century, long before the tribes were forced to move west of the Mississippi, the Five Civilized Tribes made rapid strides in civilization according to the European patterns.

The injustices and the hardships of their forced removal, between 1829 and 1846, arrested all progress they were making. After a decade of strife, when they were once again emerging into harmony and progress, their development was again disrupted by the Civil War.

After the hatreds and cruelties of the Civil War had somewhat subsided, progress among members of the tribes was again revived and continued with little interruption for the next half century. However, around 1890, white settlers once again overran the areas inhabited by the Five Tribes. This caused the Indians again to withdraw from society. Despite a treaty obligation to keep whites out, at statehood the entire Indian territory contained five times as many whites as Indians and the tribes were in a completely demoralized state.

To compound the problem, a series of legislative acts, from 1902 to 1959, had the effect of permitting Indian lands to pass from tribal ownership to individual Indians. From 1902 to the present time, approximately 19 million acres were turned over to individual Indians by means of deeds. While some owners benefited from their allotments, others sold out for a fraction of the land's value. Only 700,000 acres remain in restricted status. However, very few of these restricted tracts are of sufficient size or in a location to justify their consolidation for economic purposes.

Many of the members of the tribes have been able to ride the crest of white aggressiveness and hold their own. Accordingly, the social status of the tribes ranges from those who are highly educated and fully acculturated to those who are illiterate and living in the depths of poverty. Some of the most prominent doctors, attorneys, educators, bankers, and businessmen of Oklahoma are of Indian descent. On the other hand, many tribal members have little or no education, very low incomes, and are experiencing great difficulty in maintaining an existence. The economic and social status of the tribes is perhaps lower today than it was a half century ago.

A serious problem of economic necessity faces the Indian people in Oklahoma today. There is an urgent need for jobs that furnish permanent employment. The State of Oklahoma also realizes that it has moved beyond its ability to maintain its population and economy based upon agriculture and the oil industry. Therefore, it appears logical that the Indian and non-Indian people alike within the State face a common economic problem.

The development of an industrial and commercial recreation economy seems to be the common solution. Before substantial advances can be made, however, members need to have an appreciation for adequate housing and sanitation, better understanding of government from the community to the national level and a greater concern for general health and welfare. It will also be necessary for many members of the Five Tribes to be motivated to progress more rapidly than in the past to keep up with the country's technological advancement.

STATISTICAL DATA OF THE FIVE CIVILIZED TRIBES

As shown in table I, the Indian population of the Five Civilized Tribes has been steadily increasing since 1950. The population increased from 36,318 in 1950 to 38,503 in 1960, or 6 percent. By comparison, the total population of Oklahoma increased only 4.3 percent during the same period. The rate of population growth of Indians in Oklahoma is greater than the total Oklahoma population because migration to other States is less frequent among the Indian people than among the non-Indian. The lack of marketable skills discourages migration on the part of the Indians.

TABLE I.—*Population increase of the Five Civilized Tribes within the 40-county jurisdiction*

Year:	*Population*
1950	36, 318
1960	38, 503
1962	40, 042

Source: Bureau of Indian Affairs.

The age distribution of the members of the Five Civilized Tribes is shown in table II. Fifty percent of the population is less than 20 years of age. As is true of Indian tribes throughout the United States, the Five Civilized Tribes have a younger population than that of the general U.S. population.

TABLE II.—COMPOSITION OF MEMBERSHIP BY AGE, JUNE 1962

Age	Population	Percent
1 to 19	19, 914	50
20 to 39	9, 618	24
40 to 59	7, 914	20
60 and up	2, 596	6
Total	40, 042	100

Source: Bureau of Indian Affairs.

The school enrollment figures shown in table III includes all the Indian children of the members of the Five Civilized Tribes who maintain permanent residence in the jurisdictions. The Bureau is encouraging all children to finish high school and secure college or vocational training following high school graduation. Such attainment will be important in stimulating economic and social growth.

TABLE III.—PERMANENT RESIDENTS OF JURISDICTION ATTENDING PUBLIC AND PRIVATE SCHOOLS, JUNE 1965

School	Boys	Girls	Total	Percent
Public	8, 000	9, 702	17, 702	90
Federal	733	724	1, 457	7
University	237	200	437	3
Total	8, 970	10, 626	19, 596	100

Source: Bureau of Indian Affairs.

Table IV provides a breakdown of the family income of the Five Civilized Tribes. About 90 percent of the families receive incomes of less than $3,000. The unskilled members of the tribes, who are in the majority and who depend on irregular farm labor and timber work, have few opportunities to earn more money. Continued emphasis by Bureau, State, and local agencies on vocational training, employment assistance, as well as industrial and commercial recreational development will provide means for employment and thereby increase the income level of the tribal members.

TABLE IV.—FAMILY INCOME OF MEMBERS OF THE FIVE CIVILIZED TRIBES, 1964

Income	Chickasaw	Creek	Cherokee	Choctaw	Seminole	Total	Percent
Unknown	0	146	0	109	1	256	2.6
Under $1,000	102	731	1,196	1,070	318	3,417	35.4
$1,000 to $1,999	479	1,170	498	500	597	3,244	33.6
$2,000 to $2,999	336	409	298	390	278	1,702	17.6
$3,000 to $4,999	41	292	0	260	80	673	7.0
$5,000 to $9,999	51	147	0	45	49	292	3.1
$10,000 and over	10	29	0	20	4	63	0.7
Total	1,019	2,924	1,993	2,384	1,327	9,647	100.0

Source: Bureau of Indian Affairs.

Table V presents information on the labor force and employment status of the group.

TABLE V.—LABOR FORCE, EMPLOYMENT AND UNEMPLOYMENT WITHIN THE FIVE CIVILIZED TRIBES AGENCY JURISDICTION, MARCH 1966

	Total	Male	Female
Labor force (14 years and over)	17,480	10,637	6,843
Employed, total	12,510	8,400	4,110
Permanent (more than 12 months)	8,042	5,571	2,471
Temporary (including persons away on seasonal work)	4,468	2,829	1,639
Unemployed	4,970	2,237	2,733
Percent unemployed	28.4	21.0	39.9
Not in labor force (14 years and over)	10,894	3,269	7,625
Students (14 years and over, including those away at school)	3,795	1,851	1,944
Men (all reasons)	1,418	1,418	
Women for whom no child-care substitutes are available	3,735		3,735
Women (all other reasons)	1,946		1,946

Source: Bureau of Indian Affairs semiannual report of Labor Force, Employment and Unemployment (March 1966).

The Indian-owned land of eastern Oklahoma is dispersed among that owned by non-Indians and is mostly hilly timberland. Because of this, large-scale farming is not usually possible in the Five Civilized Tribes area. As shown in table VI, only 15 percent of the Indian-owned land is used for farming, while 48 percent is used for open grazing.

In eastern Oklahoma, the trend has been away from a cash-crop type of farming to a grass-cattle economy. Accordingly, the principal Bureau activities in the field of land operations have been the development of improved pastures to increase cattle production which can produce incomes comparable with most of the cash-crop farms in the area.

TABLE VI.—LAND INVENTORY, DECEMBER 1964

	Indian operated		Non-Indian operated				
	Individual	Tribal	Individual	Tribal	Idle	Total	Percent
Dry farming	29,489	3,079	79,650	1,200	6,898	120,316	15
Open grazing	115,752	12,352	173,077	5,111	53,779	360,071	48
Noncommercial included	164,868	10,481	90,543	4,875		270,767	35
Nonagricultural uses			5,154			5,154	2
Total	310,109	25,912	348,424	11,186	60,677	756,308	100

INDIAN TRIBES RESIDING IN NORTH CENTRAL OKLAHOMA

HISTORICAL BACKGROUND

This report covers all or parts of 11 counties in north central Oklahoma, where 14 Indian tribes reside. The tribes are the Osage, Eastern Shawnee, Miami, Quapaw, Seneca-Cayuga, Kaw, Otoc-Missouria, Pawnee, Ponca, Iowa, Mexican Kickapoo, Pottawatomi, Sac and Fox, and Absentee Shawnee. The counties are Osage, Pottawatomie, Key, Pawnee, Delaware, Ottawa, Noble, Logan, Payne, Lincoln, and Cleveland. The jurisdiction of the Bureau of Indian Affairs is represented in the Osage, Miami, Pawnee, and Shawnee Agencies.

Osage Agency

The Osage Reservation, now Osage County, comprises 1,470,559 acres and is located in northern Oklahoma. Since the reservation was purchased pursuant to treaty, the Osage were excluded from the provisions of the General Allotment Act and their lands were not allotted until they agreed in 1906. The Act of June 28, 1906 (34 Stat. 559) entitled "An Act for the division of the lands and funds of the Osage Indians in Oklahoma Territory and for other purposes," known as the Osage Allotment Act, is the organic law governing the administration of current Osage affairs and marks the beginning of special legislation enacted by the Congress for the exclusive benefit of the Osage Tribe.

There were 2,229 Osage (of which 926 were full-blood and 1,303 were mixed-blood or adopted) enrolled under the provisions of the 1906 Act. These enrollees constitute the legal membership of the tribe and are referred to locally as "allotted" members. Each allottee received approximately 658 acres of land, a $3,819.76 credit on the books of the United States Treasury representing segregation of the balance of proceeds from the sale of Osage Kansas lands, and the right to a pro rata share of the income, distributed quarterly, from such trust funds and net tribal mineral income. These shares are known as headrights. The income is derived from Osage minerals and business activities related to these minerals.

Rapid assimilation with non-Indians took place in early years in the Osage Tribe. Those members of the tribe of one-fourth Indian blood almost without exception fully identify themselves with the non-Indian social and economic life of the communities in which they reside. Because of this rapid assimilation and the lack of adequate resources and opportunities on the reservation, a large percentage of the Osage people have relocated in other areas, the greatest segment outside of Oklahoma being located in California. Many are now gainfully employed and some have attained recognition and success in the arts, the professions, and in businesses.

A large number of Osage Indians, many of whom have one-half degree of Indian blood or more, still reside in Osage County. Many of them do not receive income from the headrights. Social integration of this group has been impeded by numerous factors. One major factor is the community attitude created by the Osage mineral trust, which is difficult to overcome. First of all, the community in general is envious of the headright owners, and every effort is made to separate them from their income or headrights. Secondly, because of the independent income from headrights, the individual Osage is somewhat separate from the general community and does not really consider himself a part of it. As a result, two distinct community divisions are attempting to exist in the same area. There is no longer a cohesive Osage culture, nor is the Osage able to live by the culture of the general non-Indian community. The greatest needs of the Osage Tribe are assistance and guidance for those 2,700 Osage residing in the county. Assistance is needed for everyday existence and in fostering social integration that will lead to their full acceptance by the community.

Miami Agency

The Eastern Shawnee, Miami, Quapaw, Seneca-Cayuga, and Wyandotte Tribes, as well as Modoc, Ottawa, and Peoria Terminated Tribes. reside in northeastern Oklahoma under the jurisdiction of the Miami Agency. The jurisdiction covers all or parts of seven counties, with the agency headquarters in Miami, Ottawa County, Oklahoma. The reservations under the Miami jurisdiction originally comprised about three-quarters of Ottawa County, Oklahoma.

The tribes were descendants of midwestern Algonquian and Iroquoian Bands that roamed the areas from Lake Erie to Kansas. They were located in Oklahoma during the nineteenth century.

In the early 1800's all of the area, now under the jurisdiction of the Miami Agency, was known as Quapaw Country, although some Senecas and Shawnees lived there also. In 1867, the Quapaws ceded a large portion of their reservation for settlement by other tribes, which tract was subdivided into small reservations for various tribes settling there.

The groups have been integrating into the social life of Oklahoma since the 1900's. Today, they are, for all practical purposes, assimilated. They do not call upon the Bureau for help, although Bureau services are legally available.

As of June 1, 1964, there were only 20,604 acres of restricted Indian lands; 90 percent of these agricultural lands are presently under lease with an effort being directed toward assisting the owners to use better economic practices on the land.

Pawnee Agency

Four tribes, Otee-Miscouria, Ponca, Kaw, and Pawnee, are situated within the jurisdictional area of the Pawnee Agency. Within this area, 86,823 acres of Indian-owned land are held in trust by the Federal Government; of this total only 7,515 acres are operated by Indians themselves. The total land is estimated to represent approximately $11 million in value. The lands are in trust, multiple, and tribal ownerships. A legal land survey is a serious need.

Of the 2,784 Indians that live in this area, fewer than 40 percent were gainfully employed in full or part-time jobs in 1962. The average income is below that for the adjacent area and consists mostly of agricultural rentals, oil and gas leases on trust land, pensions, part-time labor, and welfare.

The Indians in this area and in Oklahoma generally were allotted separate tracts of land. Then the interspersed areas were opened to setlement by homesteaders through the various acts of Congress, starting in 1887, either by run or lottery.

This area, along with many others in Oklahoma, is one of severe rural poverty. The situation will not improve until the economy is diversified and industrial or commercial enterprises are induced to locate in the area to provide job opportunities for wage seekers. Permanent local employment would not only aid Indians of this jurisdiction but also the entire north central part of the State.

Shawnee Agency

The jurisdiction of the Shawnee Agency covers all or parts of each of six countries in central Oklahoma. The agency is responsible for the Bureau affairs of five tribes, the Iowa, Sac and Fox, Mexican Kickapoo, Citizens Pottawatomi, and Absentee Shawnee.

The tribes were originally indigenous to the Great Lakes area and were encountered by traders, colonial troops, and white settlers in the 18th century. During the 19th century, through various agreements with the U.S. Government, the tribes were eventually assigned lands in Kansas and later in Oklahoma.

At the present time there are approximately 2,400 Indians living within or adjacent to this agency jurisdiction. There are approximately 48,000 acres of trust land within the six counties.

Culturally the tribes range from the Mexican Kickapoo, who cling closely to the old religion and seldom marry outside the tribe, to the Citizens Potawatomi, who themselves have practically terminated their special statue because of the extent to which they have intermarried with the non-Indian and become submerged in the greater community.

This Indian population, like many in the Anadarko area, is unique in that a significant number live in "subcommunities" or "population clusters" located within boundaries of lands originally assigned to the tribe. The individuals usually reside on land in which they have a small, undivided, inherited interest or which belongs to a relative. They usually occupy an inadequate, deteriorated dwelling that was built by the allottee and which is often shared by other heirs. There are a few whose income from earnings approaches the average national level and yet who choose to live in the most primitive and dilapidated dwellings. Aside from land sales proceeds, supervised by this agency, the individual amounts spent for maintenance or improvements on these dwellings is negligible.

There is still present among the tribes residual cultural characteristics or traits that act as deterrents to the development and economic adjustment of both individuals and families. In addition, many still try to cling to the practice of securing their living from the land and refuse to leave the area for employment or to recognize the necessity for formal education or vocational training.

There is still much need to stimulate interest and to involve the Indian population of this area in activities of the greater non-Indian community. This will contribute to strengthening self-esteem and improving the public image of the tribes. There is also a need to assist families to remain together as units and to encourage children to finish high school and to secure college or vocational training.

GENERAL POPULATION, SOCIAL AND ECONOMIC CHARACTERISTICS

Population

As shown in table I, the Indian population of the Oklahoma tribes residing in north central Oklahoma has been increasing since 1950. The population increased from 8,640 in 1950 to 9,033 in 1960, or by 4.6 percent. This increase slightly exceeded that of the total Oklahoma population, which amounted to 4.3 percent between 1950 and 1960.

TABLE I.—*Population increase of Oklahoma Tribes residing in north central Oklahoma*

Year:	*Population*
1950	8, 640
1960	9, 033
1962	10, 530

Source: Bureau of Indian Affairs.

Population of tribes in 1962 and principal county of residence

A breakdown by agency and tribe indicating population of the tribes in 1962 and principal county residence of tribal members is shown in table II.

TABLE II

Agency and Tribe	Population, 1962	Principal county residence of tribal members
Osage Agency	2, 872	Osage, Pottawatomi, Kay, Cherokee, Pawnee, Comanche, Delaware, Rogers, Mayes, Tulsa, and Washington.
Miami area field office	2, 474	Ottawa and Delaware.
Eastern Shawnee	299	
Miami	299	
Quapaw	1, 144	
Seneca-Cayuga	732	
Pawnee Indian Agency	2, 784	Kay, Noble, and Pawnee.
Kaw	248	
Otoe-Missouria	973	
Pawnee	687	
Ponca	876	
Shawnee Indian Agency	2, 400	Lincoln, Logan, Payne, Oklahoma, Pottawatomie, Cleveland, and Johnston.
Iowa	258	
Mexican Kickapoo	416	
Pottawatomi	318	
Sac and Fox	656	
Absentee Shawnee	752	

Source: County locations of Federal Indian eservations and other land units, June 30, 1961, Bureau of Indian Affairs.

Composition by age

The age distribution in 1962 of the members of the tribes of north central Oklahoma is shown in table III. The tribal membership rolls of the Eastern Shawnee and Absentee Shawnee as of August 20, 1964, were used as the population documents from which samples were drawn. The average percent by age categories was computed from these two rolls and these percentage figures were applied to the 1962 population figure of 50,530 to compute the figures shown in the table. More than 50 percent of the total members were less than 20 years of age. As is true of Indian tribes generally throughout the United States, these tribes have a younger population than that of the general U.S. population. Only 39 percent of the U.S. population was under 20 years of age in 1960.

TABLE III.—COMPOSITION OF MEMBERSHIP, BY AGE, JUNE 1962

Age	Population	Percent
1 to 19	5,300	50
20 to 39	2,950	28
40 to 59	1,680	16
60 and up	600	6
Total	10,530	100

Source: Bureau of Indian Affairs.

Educational characteristics

The school enrollment figures shown in table IV includes all the Indian children of families who maintain permanent residence in the jurisdiction. In Oklahoma schools in general, 60 percent of the children entering the first grade never complete high school. In the jurisdiction of these tribes, the dropout figure is approximately 75 percent. Of all students graduating from high school in Oklahoma, 46 percent continue into higher education. For Indian graduates of high school, only 30 percent continue into higher education. The Bureau is encouraging all children to finish high school and secure college or vocational training following high school graduation.

TABLE IV.— PERMANENT RESIDENCE OF JURISDICTION ATTENDING PUBLIC AND PRIVATE SCHOOLS, JUNE 1965

School	Boys	Girls	Total	Percent
Public	2,493	2,471	4,964	92
Federal	133	133	266	5
University	91	66	157	3
Total	2,717	2,670	5,387	100

Source: Annual School Census Report of Indian Children, 1965, Branch of Education; Bureau of Indian Affairs.

TABLE V.—LABOR FORCE, EMPLOYMENT, AND UNEMPLOYMENT, MARCH 1966

	Total	Male	Female
Labor force (14 years and over)	4,728	2,516	2,212
Employed, total	2,744	1,696	1,048
Permanent (more than 12 months)	1,180	711	649
Temporary (including persons away on seasonal work)	1,564	985	579
Unemployed	1,984	820	1,164
Percent unemployed	41	32	52
Not in labor force (14 years and over)	2,445	1,092	1,353
Students (14 years and over including those away at school)	1,061	548	513
Men (all reasons)	544	544	
Women for whom no child-care substitutes are available	565		565
Women (all other reasons)	275		275

Source: Bureau of Indian Affairs Semiannual Report of Labor Force, Employment, and Unemployment (March 1966).

HISTORICAL BACKGROUND

The Cheyenne and Arapaho Tribes are members of the Algonquian speaking family. Around 1835 a portion of the migrating tribes separated itself from the main body, settling along the Arkansas River in Colorado to become known as the Southern Cheyenne and Arapaho. It is this group that was finally resettled on reservation land at Darlington, Indian Territory, in 1869, on what is today western Oklahoma. In 1877 they were joined by a group of more than 900 Northern Cheyenne who had been driven south from their lands at the headwaters of the North Platte and Yellowstone Rivers. About 350 of the Northern Cheyenne fled Oklahoma, and after several heroic skirmishes with U.S. Federal troops, were eventually settled on the Tongue River in southern Montana.

The original Cheyenne and Arapaho Reservation had an area of 4,294,459.59 acres. Under the act of February 8, 1887 (24 Stat. 338), as amended by the act of March 31, 1891 (26 Stat. 989), 3,331 Indians of the Cheyenne and Arapaho tribes were allotted 528,789 acres out of the original reservation. Approximately three and one-half million acres were opened to settlement and the balance set aside in reserves for miscellaneous school, agency, military, mission and other purposes. At the present time, there are approximately 110,000 acres of allotted land held in trust for the Cheyenne and Arapaho Indians. There are also approximately 10,000 acres of tribal land of which 5,873 are held in trust while fee patents have been issued on 3,889 acres. The grand total of tribal and allotted land is approximately 120,000 acres.

The former reservation of the Cheyenne-Arapaho Tribes of Oklahoma consists of all the counties of Blaine, Custer, Dewey, Washita, and parts of the counties of Beckham, Canadian, Kingfisher and Roger Mills. Approximately 54 percent of the total enrolled members reside in this area.

The principal resource of this area of western Oklahoma is its agricultural lands. The major portion of the income derived from these lands is being received by the non-Indian owners or leasees. The main farming non-Indian enterprises are cattle ranching and raising grain by dry farming.

The checkerboarding of Indian lands through sales and inheritance of allotments and the limited agricultural skills of the Cheyenne-Arapaho lead to leasing their agricultural land. As a consequence the tribal members receive little income from this resource. Of 1,148 separate land use units in Indian ownership, 1,121 are being utilized by non-Indian operators.

The Cheyenne-Arapaho area has good prospects for the development of the oil and gas industry in this area of Oklahoma. The area also has a potential for the development of small industries such as woodworking and textile plants close to Indian communities. Small industries would create new jobs and increase economic opportunities for Cheyenne-Arapaho tribal members. The completion of U.S. Highway 66, which crosses Cheyenne-Arapaho land, as a four-lane highway, will benefit this development.

The record reveals that the Cheyenne-Arapaho people were enjoying a stable society and lived peacefully in prereservation history. The impact of American civilization caused the loss of their native economy and extensive social disorganization. The sales and disposition of allotted lands have barred development of the Indian agricultural economy. The lack of any viable economy has resulted in the loss of status and self-confidence essential to the progress of any people.

STATISTICAL DATA OF THE CHEYENNE AND ARAPAHO TRIBES

POPULATION CHARACTERISTICS

There has been a steady increase of the population of the Cheyenne and Arapaho people during the past 18 years.

The available population data of the Bureau of Indian Affairs shows that the population within the area and adjacent thereto increased from 2,604 in 1944 to 3,640 in 1962. Table I shows this increase from 1944 to 1962.

TABLE I.—*Population increase of Cheyenne-Arapaho Tribal members within reservation area and adjacent thereto*

Year:	
1944	2, 604
1945	2, 752
1950	3, 019
1960	3, 500
1962	3, 640

GENERAL POPULATION, SOCIAL AND ECONOMIC CHARACTERISTICS: JUNE 1962

TRIBAL MEMBERSHIP

A research committee from the staff of the Concho Area Field Office at Concho, Okla., conducted a recent study of the enrolled members of the Tribes in an effort to learn where the tribal membership lives, and to obtain data regarding income, employment and educational achievements. This committee was selected from staff members who had a broad knowledge of the Cheyenne-Arapaho people and who had received training in conducting a research project. The tribal membership roll, which was prepared and issued by the business committee of the tribes on June 25, 1962, consisting of 4,671 persons, was used as a document from which information was drawn. The tribes are in the process of compiling a current roll and indications are that there are presently about 5,000 enrolled members to date.

Tables II to VI represent a concise summary of the findings of this committee and observations made regarding the tribal membership of this 1962 roll.

Place of residence of tribal membership

The findings indicate that 54 percent of the membership of the tribes continue to reside on former Cheyenne and Arapaho Reservation land in Oklahoma. It can be reasonably assumed that, since official inquiries did not reveal their place of residence, the 12 percent with an address unknown reside off the former reservation.

TABLE II.—LOCATION OF ENROLLED MEMBERS OF THE CHEYENNE AND ARAPAHO TRIBES OF OKLAHOMA BY PLACE OF RESIDENCE, JUNE 1962

Place of residence	Number	Percen
On former reservation in Oklahoma	2, 522	54
Off former reservation in Oklahoma	654	14
In States other than Oklahoma	934	20
Address unknown	561	12
Total	4, 671	100

Age and sex

The composition of the Tribes by age and sex as determined from the 1962 roll is shown in table III.

TABLE III.—COMPOSITION OF MEMBERSHIP—AGE AND SEX, JUNE 1962

Age groups (years)	Males	Percent	Females	Percent	Total	Percent
0 to 20	1,071	46	1,318	57	2,389	51
21 to 40	730	31	680	29	1,410	31
41 to 60	438	19	242	10	680	14
61 to 100	96	4	96	4	192	4
Total	2,335	100	2,336	100	4,671	100

Composition of membership by degree of blood

Table IV reflects that there are 2,466 (or approximately 53 percent) of the 4,671 members of the Cheyenne and Arapaho Tribes on the June 1962 roll who are full-blood Cheyenne and Arapaho.

TABLE IV.—COMPOSITION OF MEMBERSHIP BY DEGREE OF CHEYENNE-ARAPAHO BLOOD, JUNE 1962

Degree	Number	Percent
4/4	2,466	53
3/4 up to 4/4	609	13
1/2 up to 3/4	973	21
1/4 up to 1/2	488	10
Less than 1/4	135	3
Total	4,671	100

Economic and educational characteristics of 1962 enrolled members

(The following statistical information was compiled from a sample of the 1,870 persons on the tribal roll in age group 21–55.)

Income statistics

From the sample, it was found that the median annual income per family from all sources amounted to approximately $962 or a per capita mean income per person of $362. Table V below shows an analysis of this income data by number of families. The total family income ranges from $139 to $9,143 and the size of the family units from 1 to 17 members.

TABLE V.—TOTAL FAMILY INCOME FROM ALL SOURCES FROM A SAMPLE OF 26 FAMILIES WITH A MEMBER IN THE AGE GROUP 21 THROUGH 55 RESIDING ON THE FORMER CHEYENNE AND ARAPAHO RESERVATION IN OKLAHOMA, JUNE 1962

Income	Number of families	Percent
0 to $500	5	19
$501 to $1,000	8	31
$1,001 to $1,500	9	35
$1,501 to $2,000	1	4
Over $2,000	3	11
Total	26	100

Education characteristics

The educational level of the Cheyenne and Arapaho is below that of the non-Indian of western Oklahoma. This places the Indian at a disadvantage when competing for employment. A review of the school attendance records presents a very discouraging picture. The educational achievements of the tribal members from the sample are indicated in table VI below:

TABLE VI.—EDUCATIONAL ACHIEVEMENTS OF TRIBAL MEMBERS, AGES 21–55, JUNE 1962

Grades completed	Number	Percent
4 to 6	144	8
7 to 9	862	46
10 to 12	720	38
13 to 15	144	8
Total	1,870	100

LAND OWNERSHIP

The problem of fractionated land holdings is becoming more acute with time. Table VII below shows a breakdown of land holdings according to the number of owners. The land income received by individual Indians is, in most cases, insignificant. There is a tendency for many of the Indian people to rely on this and other unearned income for their livelihood rather than to obtain wage work. The belief of many Indians that the land is a great asset is out of proportion to its actual benefit.

TABLE VII.—*Ownership in tracts under the supervision of the Concho Agency*

Number of owners:	*Number of tracts owned*
1	430
2	128
3	73
4 to 6	154
7 to 10	105
11 to 20	118
21 to 50	64
Over 50	12

TABLE VIII.—LABOR FORCE, EMPLOYMENT AND UNEMPLOYMENT
CHEYENNE AND ARAPAHO TRIBES, MARCH 1965

	Total	Male	Female
Labor force (14 years and over)	1,504	662	842
Employed, total	555	245	310
Permanent (more than 12 months)	155	69	86
Temporary (including persons away on seasonal work)	400	176	224
Unemployed	949	417	532
Percent unemployed	63	63	63
Not in labor force (14 years and over)	740	326	414
Students (14 years and over, including those away at school)	500	220	280
Men (all reasons)	60	60	
Women for whom no child-care substitutes are available	75		75
Women (all other reasons)	105		105

Source: Bureau of Indian Affairs Semiannual Report of Labor Force, Employment and Unemployment (March 1965).

HISTORICAL BACKGROUND

Members of the Kiowa, Comanche, Apache, Fort Sill Apache, Wichita, Caddo, and Delaware Tribes reside in southwestern Oklahoma under the jurisdiction of the Anadarko Agency. The jurisdiction covers all or parts of 10 counties, and the agency headquarters are located in Anadarko, which is the county seat of Caddo County. Caddo County has the largest concentration of Indian population of any county within the jurisdiction.

The Kiowa, Comanche, and Apache Tribes are descendants of wandering plains tribesmen, who less than a century ago were primarily hunters, constantly on the move and warring with other tribes for possession of buffalo herds. Under the Medicine Lodge Treaty of October 21, 1867, they were assigned a reservation in southwestern Oklahoma, located between the Washita River on the north and the Red River on the south.

The Wichita, Caddo, and Delaware Tribes have had joint interests from the time they were affiliated in 1867. The reservation assigned to them was also in an area of what is today southwestern Oklahoma. Their agency headquarters were established in 1866 near what is now the town of Anadarko. Their land joined the Kiowa, Comanche, and Apache Reservation land on the north and was later consolidated with the Kiowa-Comanche-Apache Agency.

The reservations of these tribes are no longer in existence. In 1887, after allotting land to individual Indian owners, the remaining land was opened up to settlement. While many owners retained and benefited from their allotments, others sold out for a fraction of the land's value. As of June 1, 1964, there was a total of 330,350 acres remaining in trust or restricted status. There are, in addition, 5,353 acres of tribal land and 3,175 acres of Government land.

The "checkerboarding" of Indian lands through sales and inheritance of allotments and the limited extent of the agricultural skills of Indians of these tribes lead them to lease their agricultural lands. As a consequence, the tribal members receive little income from this source. In addition, the land base is gradually being reduced and the population is increasing, so that income from these resources is becoming more inadequate as time goes by.

Over the past few years, the economic situation has been improved somewhat due to the large number of oil and gas leases and to land sales. During fiscal year 1964, a total of $2,060,000 was derived from farming and grazing leases, oil and gas leases, permits and royalties on this land. This averages $493 a year per landholder. Exploration for other oil and gas resources in this area is currently underway, and income from oil and gas, affecting a comparatively small number of tribal members, appears likely to increase.

The area has a potential for small industries, which would create new jobs and increase economic opportunities for the Indians of southwestern Oklahoma. The establishment of the Sequoyah Mills at Anadarko is a good example of a small industry that has done much to give the Indians of southwestern Oklahoma a chance to improve their living and economic conditions. This mill, which manufactures tufted carpets, provides 90 Indians of this area with a living wage and has given them the first real chance to help themselves.

Some members of the western tribes, by reason of their customs and experience, have been disadvantaged in their ability to adjust to the requirements and demands of the society that surrounds them. Areas exist in western Oklahoma that may accurately be described as "pockets of poverty", where Indian Americans are living in isolation and segregation, separated from the larger community, rarely a part of it. These Indian people are desperately deprived. But absence of resources is not the most devastating aspect of Indian poverty. Rather it is the inability of many Indians to understand and accept the opportunities of American society that are open to them.

GENERAL POPULATION, SOCIAL AND ECONOMIC CHARACTERISTICS

Population

The Indian population of this jurisdiction has been steadily increasing since 1950. Table I shows that the population within the jurisdiction has increased from 5,574 in 1950 to 7,500 in 1962. The rate of annual population growth between 1950 and 1960 was 1.9 percent. By comparison, the annual rate of growth of U.S. population for this 10-year period was 1.7 percent.

TABLE I.—*Population increase of tribes residing in Anadarko Agency jurisdiction*

Year:	*Population*
1960	6, 727
1950	5, 574
1962	7, 500

Source: Bureau of Indian Affairs.

Composition by age and sex

The composition of the tribes by age and sex is shown in table II. As shown in this table, 42 percent of the Indian population of the area is under 18 years of age and approximately 50 percent is less than 20 years of age. In contrast only 39 percent of the U.S. population was under 20 years of age in 1960.

TABLE II.—AGE AND SEX DISTRIBUTION, JUNE 1962

Age	Kiowa, Apache, Comanche	Wichita, Caddo, Delaware	Fort Sill Apache	Total	Percent	Cumulative percent
Under 13	1, 826	604	30	2, 460	33	33
14 to 17	539	178	9	726	9	42
18 to 54	2, 204	730	37	2, 971	40	82
55 to 64	441	146	7	594	8	90
Over 65	556	184	9	749	10	100
Total	5, 566	1, 842	92	7, 500	100	100
Male	2, 369	669	43	3, 081		
Female	3, 197	1, 173	49	4, 419		
Total	5, 566	1, 842	92	7, 500		

Source: Bureau of Indian Affairs.

Educational characteristics

(The following statistical information was taken from the annual school census of Indian children of Oklahoma compiled by our branch of education. The data are for fiscal year 1965 and cover all the Indian children of the seven tribes of southwestern Oklahoma who have a permanent residence in the State and who are enrolled in school.)

It can be seen from table III that a large percentage (approximately 91 percent of the Indian children of these tribes attend public and private schools. However, the educational attainment of the Indian students of this area is lower than their white classmates. This educational disparity increases with the grade level. This places the Indian student at a disadvantage when competing with white students in higher grades and in college. Of 3,440 enrolled in school, only 146 are enrolled as undergraduate or postgraduate students.

TABLE III.—EDUCATIONAL DATA COVERING INDIAN CHILDREN PERMANENTLY RESIDING IN OKLAHOMA AND ENROLLED IN SCHOOL, JULY 1965

Classification of children	Apache, Kiowa, Comanche	Delaware, Caddo Wichita	Fort Sill Apache	Total
1. Total number enrolled in all schools	2,794	627	19	3,440
Living within the agency jurisdiction area	2,410	478	19	2,907
Living outside the agency jurisdiction area	307	142	0	449
Residence unknown	77	7	0	84
2. Total number enrolled in all schools	2,794	627	19	3,440
Public schools	2,523	561	16	3,100
All Federal schools	129	27	0	156
Mission and private schools	33	5	0	38
Colleges and universities	109	34	3	146

Land resources

The principal resource of this area is agricultural farming. However, the Indian people receive little benefit from the income accruing from agricultural activities. From table IV below, it can be seen that of a total of 161,316 acres of Indian land that is being utilized for dry farming, only 10,750 acres are being operated by Indian people. Similarly of a total of 132,205 acres being utilized for open grazing for cattle ranching, only 11,640 acres are under the management of Indians. Most of the agricultural income of Indian people of this area comes from seasonable farm labor but modern agricultural machinery is reducing the number of these seasonal agricultural jobs.

TABLE IV.—LAND INVENTORY, JUNE 30, 1964

	Dry farmed	Irrigated	Open grazing	Timber-land	Nonagri-culture uses	Total	Percent
Indian operated:							
Individual	10,610	320	11,630	2,441	570	25,571	7.6
Tribal	140		10		20	170	.1
Subtotal	10,750	320	11,640	2,441	590	25,741	7.7
Non-Indian operated:							
Individual	148,696	1,490	117,915	26,979	9,705	304,785	90.7
Tribal	1,870		2,650	590	70	5,180	1.6
Subtotal	150,566	1,490	120,565	27,569	9,775	309,965	92.3
Total	161,316	1,810	132,205	30,010	10,365	335,706	100.0

TABLE V.—LABOR FORCE, EMPLOYMENT AND UNEMPLOYMENT WITHIN ANADARKO AGENCY JURISDICTION, MARCH 1966

	Total	Male	Female
Labor force (14 years and over)	1,327	1,172	155
Employed, total	1,138	1,017	121
Permanent (more than 12 months)	828	762	66
Temporary (including persons away on seasonal work)	310	255	55
Unemployed	189	155	34
Percent unemployed	14	13	22
Not in labor force (14 years and over)	3,187	900	2,287
Students (14 years and over including those away at school)	820	405	415
Men (all reasons)	495	495	--------------
Women for whom no child care substitutes are available	194	--------------	194
Women (all other reasons)	1,678	--------------	1,678

Source: Bureau of Indian Affairs Semi-annual Report of Labor Force, Employment and Unemployment (March 1966).

POSITION WITH RESPECT TO THE NATIVE LAND CLAIMS ISSUE

By EMIL NOTTI*

FOREWORD

Title to most of the land in Alaska remains under dispute. Prompt and equitable settlement of the land claims issue is fundamental to economic development in that State and to the full participation of the Alaskan natives in this development. The Alaska Federation of Natives has proposed four elements which should be included in a settlement of Native claims: granting of clear Native title to village land which they have historically used and occupied; payment of compensation to the Natives of $500 million plus a 2-percent royalty as compensation for lands previously taken and lands relinquished as part of a settlement; recognition of Native corporations as management agents for the land and funds; creation of an Alaska Native Commission to assist in the administration of the settlement act.

Introduction

The Board of Directors of the Alaska Federation of Natives ("AFN") has been asked its position on the settlement with the Federal Government of the one hundred year problem of Native Land Claims.** AFN feels that a settlement of native claims to land in Alaska should include:

A. Confirmation of title to land in the Native villages which has been used and occupied by the Native people from time immemorial. AFN proposes that said confirmation of lands should be in the amount of 40 million acres.

B. A payment of $500 million and an overriding royalty of 2 percent of the revenue derived from the lands as compensation for lands previously taken, and as compensation for the extinguishment of any and all claims against the United States, based upon aboriginal right, title, use and occupancy of lands in Alaska by any Native or Native group.

C. Recognition of a statewide Native corporation, and not more than 12 regional corporations as the management group for the land and funds.

D. Creation of an Alaska Native Commission to assist in the administration of the Settlement Act.

Each of these concepts (confirmation of title to a specific amount of land, payment of compensation and provisions for the administration of the settlement) have been included in prior bills introduced in Congress.

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*President, Alaska Federation of Natives.

**AFN will attempt to achieve a separate settlement with the State of Alaska. Because of statements made by Governor Miller during the recent hearing of the Senate Interior Committee AFN is hopeful that it will be able to reach a final settlement with the State.

I. Confirmation of Title to Lands

The Natives of Alaska have watched the tremendous growth in their State without having had a full opportunity to participate in that growth. The historical use and occupancy of the lands by the Natives for many centuries is indisputable. AFN proposes that the title of land heretofore used and occupied by the Natives be confirmed to them in the total amount of 40 million acres in the manner specified below.

1. Each recognized Native village should have confirmed, subject to valid existing rights, a total of four townships, or 92,160 acres. Lands that have been tentatively approved for selection by the State of Alaska are to be included in the lands to be withdrawn on behalf of the Natives. All public lands withdrawn and subsequently conveyed shall be contiguous, except as separated by bodies of water, and shall be in units of not less than 1,280 acres. As provided in S. 1830, each of the villages should be named in the legislation, and the land withdrawals should be made by the legislation. Since the population of the villages varies, and because regional differences exist, an additional grant to the larger villages based on the number of Natives on the village rolls should be made. The additional grant should be calculated on the basis of 500 acres per person, less the grant of four townships, or 92,160 acres. The additional grants of land should be limited to the "claim area" of the regional association in which the community is now located, as shown on the Bureau of Land Management's "Native Protest Map", but need not be contiguous.
2. Regional corporations should be established by the legislation. Each of these corporations should operate in an area roughly analogous to the area now covered by one of the following regional associations:[1]
    - (*a*) Arctic Slope Native Association (Barrow, Point Hope).
    - (*b*) Bering Straits Association (Kotzebue, Seward Peninsula, Unalakleet, St. Lawrence Island).
    - (*c*) Association of Village Council Presidents (southwest coast, all villages in the Bethel area, including all villages on the lower Yukon River and the Lower Kuskokwin River).
    - (*d*) Tanana Chief's Conference (Koyukuk, Middle and Upper Yukon Rivers, Upper Kuskokowin, Tanana River).
    - (*e*) Cook Inlet Association (Kenai, Tyonek, Eklutna, Iliamna).
    - (*f*) Bristol Bay Native Association (Dillingham, Upper Alaska Peninsula).
    - (*g*) Aleut League (Aleutian Islands, Pribilof Islands, and that part of the Alaska Peninsula which is in the Aleut League).
    - (*h*) Chugach Native Association (Cordova, Tatitlek, Port Graham, English Bay, Valdez and Seward).
    - (*i*) Tlingit-Haida Central Council (southeastern Alaska).
    - (*j*) Kodiak Area Native Association (all villages on and around Kodiak Island).

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[1] After further study of this matter, various changes may be made concerning the area covered by particular regional corporations.

(*k*) Copper River Native Association (Copper Center, Glennallen, Chitina, Mentasta).

A map showing the areas of jurisdiction of the proposed regional corporations, and a list of the villages which are entitled to have land withdrawn will be supplied.

3. After withdrawal of the lands in accordance with the proposed legislation, conveyance of those lands in fee simple should be made by the Secretary of Interior to the recognized Native village. The village, at its option, should be able to convey title to the regional corporation in whose area it is located, or to the statewide corporation with the consent of the regional corporation. Appropriate restrictions prohibiting conveyance to others should be included. AFN anticipates that most villages would convey the lands to their regional corporation.

The villages should have the right to manage the surface of the lands, if the right had not previously been granted to the regional or statewide corporation. All mineral interests [2] should be granted to the regional corporation in whose area the minerals are found, and any revenues received by a regional corporation from those interests should be divided in the following ratio: 50 percent to the regional corporation in whose area the mineral is found, and 50 percent to be divided among all of the other regional corporations on a population basis.

4. The lands withdrawn and conveyed to the villages may be located in National Parks, National Wildlife Refuges, National Forests, unimproved portions of Military Reservations, and various animal or bird sanctuaries. AFN respectfully submits that such withdrawals were made without any consideration to the Native occupants and that, equitably, the land in those withdrawals should be restored to the occupants.

5. All Indian Reorganization Act reserves, Executive order reserves, and administrative reserves (pp. 444 and 445 of "Alaska Natives and The Land", prepared by the Federal Field Committee for Development Planning in Alaska), which have been set aside for Native use or for the administration of Native affairs, should be granted subject to valid existing rights, to the villages using or occupying the land at the time of the passage of the legislation. These grants should include all mineral interests therein, and those interests should be managed as provided in paragraph 3 above. To the extent that any reserve is smaller than the area that could have been granted to the village under the terms of paragraph 1 above, additional lands should be granted to the village by the Secretary under the terms expressed in paragraph 1 above.

6. AFN believes that the lands not granted by the legislation should be subject to the protection of subsistence resources by appropriate provisions permitting the Secretary to declare any area closed to hunting, fishing or trapping by persons other than the residents of the area. As to any vacant public domain in Alaska, the Natives should have appropriate provisions in the legislation which will protect game, fish, berries, fuel and other products of the land required for subsistence purposes.

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[2] As used in this paper the term "mineral" includes, without limitation, oil, gas, gold, copper, and all other leasable and non-leasable minerals.

7. Natives residing in urban areas shall be entitled to receive a patent to the surface of 160 acres of land as permitted in section 10(h) of S. 1830.

8. Natives shall be granted the land used by them for the harvest of fish, wildlife, berries, fuel or other products of the land. The nature and extent of such grants shall be as provided in section 10(d) of S. 1830.

9. Public Land Order 4582, which created the current land freeze should be revoked with the passage of the proposed act and the granting and conveyance of lands as provided herein.

II. Payment of Compensation

1. AFN proposes a payment of $500 million and an overriding gross royalty of 2 percent of all proceeds from any State and Federal lands as compensation for lands previously taken, and as compensation for the extinguishment of any and all claims against the United States, based upon aboriginal rights to all of the lands in Alaska. Sums should be apportioned 75 percent to the villages, 20 percent to the regional corporations, and 5 percent to the statewide corporation after native enrollment is completed. The apportionment should be on the basis of population.

The above distribution of compensation will be limited as to two particular groups:

(a) The Tlingit-Haida Indians, who were granted a judgment in the Court of Claims docket No. 47,900;

(b) Those villages who have claims pending before the Indian Claims Commission that may be reduced to judgment before the legislation passes.

As to those two groups, the amount of any judgments, after deducting the payment of attorneys' fees and costs, should be withheld and reapportioned among the other Native groups on a population basis. When the compensation due those two groups is equal to the amount of money that has been offset, they should be permitted to share in accordance with the above ratios. Separate provisions are also required to deal with distribution to the Tyoneks.

2. AFN proposes that the $500 million be appropriated and deposited to the credit of the Natives by granting $100 million in the first year and $50 million each succeeding year for a period of 8 years. Interest at the prevailing Federal rate should be paid against unpaid balances.

3. Direct per capita distribution of any funds in excess of 20 percent of the amount received by any village or corporation should be prohibited. Each village, regional corporation and the statewide corporation should be authorized to expend, invest or distribute its funds to promote the advancement of the Native people in Alaska, subject to authorization by the appropriate governing body and approval by the Alaska Native Commission.

4. AFN proposes, in place of the provisions in S. 1830, which included terms that the Native people share in the revenues derived from certain sources, an overriding gross royalty of 2 percent of all proceeds from all State or Federal land not patented to the Native people. Such payments should be paid into a special fund and distributed in accordance with paragraph 1 of this section; namely, 75 percent to

the villages, 20 percent to the regional corporations, and 5 percent to the statewide corporation. There should be no time limitation on the term of the overriding royalty and it should effectively grant the Native people a perpetual interest in the lands which have been theirs for thousands of years. The Native people should participate in future royalties and benefits derived from the land, and those funds could be utilized toward the improvement of conditions in the villages.

III. STATEWIDE NATIVE CORPORATION AND REGIONAL NATIVE CORPORATIONS

Historically, dependence and reliance on Federal and State programs has effectively denied the principle of self-determination to the aboriginal people of the United States. The Alaska Natives want to govern themselves within the limitations of the law. Control of their destinies must therefore be transferred to the Native people. Meaningful progress toward that end can be taken in the settlement legislation. AFN therefore proposes the creation of (*a*) a statewide Native corporation and (*b*) up to 12 regional corporations as described above. A stateside organization, as a federation of regional associations, presently exists. The Native people strongly believe that the regional corporations would provide a maximum of local self-determination without impairing efficiency. As is apparent from the proposed distribution of funds, AFN wants to build strong regional corporations. AFN believes that there is capable regional leadership to manage the lands and money granted in the legislation.

The regional corporations should have maximum flexibility and the power to engage in any commercial or eleemosynary activities, either individually or in groups. In order to make maximum use of their resources, the regional corporations should be empowered to merge, engage in joint ventures, employ common managerial services, or collectively take whatever steps are deemed appropriate to their boards of directors.

The Native people would be stockholders and owners in the village regional and statewide organizations.

ALASKA NATIVE COMMISSION

To assist the Secretary in the administration of the Native Claims Settlement Act, an Alaska Native Commission should be appointed as an independent agency of the United States. It should be composed of five members appointed by the President, and at least three members should be Alaska Natives. The Commission should have the power to review the budgets of the village, regional, and statewide organizations, and perform such other duties as may be prescribed in the legislation. The commission should be in existence for a period of 10 years after the effective date of the act.

EXTINGUISHMENT OF ALL CLAIMS

The legislation should be a full and final settlement of any and all claims against the United States based upon aboriginal right, title, use, or occupancy of public lands in Alaska by any Native or Native group, arising under the act of May 17, 1884 (23 Stat. 24), or the act of June 6, 1900 (31 Stat. 321), or any other act of Congress, including land claims pending before the Indian Claims Commission on the effective date of the act. An appropriation of funds should be made to the Secretary of the Interior to pay all reasonable expenses and attorneys' fees that have been actually incurred by those claimants in connection with cases that are dismissed as a result of the settlement legislation.

ADDITIONAL CONSIDERATIONS

1. *Enrollment.*—AFN advocates a single enrollment of the Natives of Alaska, which would include all Natives of one-quarter or more Native blood, and any individual as defined in section 2(c) of S. 3859 (90th Cong., second sess.). Each Native should be enrolled regardless of present residence. The enrollment of the regional corporation shall consist of the rolls of all the villages within the region of the corporation. The regional corporation enrollments shall constitute the rolls of the statewide Native corporation. Distribution of funds to the various regional corporations and villages should be made based on a temporary enrollment. A sufficient amount of funds should be reserved to adjust the distribution if the final enrollment differs from the preliminary enrollment.

AFN advocates an immediate enrollment of all the Native people in Alaska and proposes that the enrollment be conducted by AFN under contract from BIA.

2. *Native Allotment Act.*—No provision of the Settlement Act should affect the rights of the Natives as citizens to acquire public lands of the United States under the Native Allotment Act of May 17, 1906, as amended, or the provisions of other statutes giving land rights to Natives.

3. *Attorneys' fees.*—The bill shall contain provisions for the payment of all reasonable attorneys' fees or expenses actually incurred by any Native group, village, association, or federation in connection with legislation pertaining to the settlement of the lands issue.

4. *Appropriations.*—Sufficient funds should be appropriated to the Secretary of the Interior to carry out the duties required of him under the Settlement Act.

CONCLUSION

Because of the past failures to settle Native land claims in Alaska, almost all of the State's 365 million acres are in controversy. The Native people have asserted their rights under aboriginal title to almost all of the land. However, the Native people recognize their duties as citizens and urge the Congress to provide a prompt and just settlement. A final resolution of all the claims will be of substantial benefit to the Natives, the State of Alaska, and to the United States.

AFN believes that the proposals submitted above constitute an appropriate formula for settlement. The essential ingredients of land grants, compensation, and shares in future revenues may perhaps be mixed in different proportions if the overall result is substantially the same. In AFN's judgment, the above formula represents the best solution. If the State of Alaska, and the Native people who are its citizens, are to advance, an effective solution must be promptly found by the Congress.

Part III: THE RESOURCE BASE

INDIAN TRUST FUNDS

By Alan L. Sorkin*

FOREWORD

Many Indian tribes have acquired substantial financial assets in recent years as the result of awards by the Indian Claims Commission. Earnings from the leasing of mineral rights are also significant. Alan Sorkin points out that while these funds are unevenly distributed among the tribes, some tribes are presented with an excellent opportunity to invest in their own economic development. To date, most tribal income has either been distributed in the form of per capita payments or has been left in trust with the Bureau of Indian Affairs. Possibilities for utilizing tribal income and trust funds for reservation development remain largely unexplored. The Bureau of Indian Affairs has not prohibited such uses of these funds, but neither has it actively encouraged such programs.

Introduction

Although about three-fourths of all reservation Indian families live in poverty,[1] many tribes have substantial deposits in the Federal Treasury or commercial banks in the form of tribal trust funds. This paper will examine various policy issues relating to these funds which total over $300 million, such as Bureau of Indian Affairs investment policy, the role of the Secretary of the Interior as guardian or trustee, and the part the funds could play in the economic development of the reservations. The sources of these funds, as well as their past and likely future growth will be discussed.

SOURCES OF TRIBAL TRUST FUNDS

In the early treaties with the Indian tribes the consideration was generally in the form of lump cash payment, an annuity in money or goods for a definite term or in perpetuity, or a combination of cash payments and annuities. The treaty with the Cherokees of February 27, 1819, was the first to create a trust fund to be held by the United States for the benefit of the tribe.[2]

During the remainder of the 19th century tribal trust funds were created for a variety of reasons. Sometimes the Government forced Indians to move from their native lands to selected reservations, obligating itself for a specific sum in consideration of their compliance. In other cases, the Government bought part of the lands outright, and deposited the purchase price in the treasury to the credit of the tribe.

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[1] U.S. Bureau of Indian Affairs, "Indian Housing, Needs, Priorities, Alternatives, and Program Recommendations," unpublished, 1966.

[2] Lawrence F. Schmeckebier, *The Office of Indian Affairs, Its History, Activities and Organization* (Institute for Government Research, the John Hopkins Press, 1927), p. 190.

Sometimes the Government simply took over the lands, and sold them for the benefit of the Indians who resided there, and deposited the proceeds in the treasury.[3]

Between 1840 and 1926 Indian trust funds increased from $4.5 million to $23.5 million. Since World War II, tribal trust funds have grown more rapidly from $28.5 million in 1947 to over $300 million in 1967. (See table I.) However, trust funds are very unequally distributed among tribes. Thus, five tribes have over $5 million in trust funds while over half have less than $100,000. (See table II.)

The rapid growth in tribal funds in recent years is due to two principal income sources. The first is income received from the settlement of Indian claims before the Indian Claims Commission. The second is the earnings received from deposits of oil, gas, and other minerals which have been found on Indian reservations

Between 1950 and 1968 there were 247 cases heard before the Indian Claims Commission. Of these 247 cases, 136 were dismissed and 101 were decided in favor of the Indian tribes.[4] Between 1950 and 1967 almost one quarter of a billion dollars was awarded to Indian tribes as settlement for claims. In 1966–67 about $44 million was awarded.

The size of the awards varies greatly. For example, in 1966, the Cheyenne-Arapaho received $15 million while the Poncha of Oklahoma received $2,458.

Not all of the funds received by the tribes as settlement for claims became a part of the tribal trust funds. In fact, a large portion is never invested, but is distributed in per capita payments.

Per capita payments are usually distributed so that each member of the tribe receives an equal share of the proceeds. Thus, if $1 million is awarded a tribe with 2,000 members, each tribal member would receive $500. Of $102 million awarded by the Indian Claims Commission between 1951–64, approximately $42 million was distributed in per capita payments.[5]

TABLE I.—GROWTH OF INDIAN TRIBAL TRUST FUNDS, 1840-1967

	Tribal trust funds [1]	Interest account [2]
Fiscal year:		
1840	$4,477,322	
1850	7,525,060	
1860	3,396,242	
1870	4,608,367	
1880	15,675,140	
1890	23,760,413	
1900	34,317,955	
1925	32,544,972	
1947	28,497,080	1,112,453
1950	42,224,129	3,335,822
1955	84,949,383	2,933,818
1960	157,757,238	2,875,978
1965	268,470,447	2,921,327
1966	257,657,379	4,212,686
1967	[3] 162,764,965	4,379,933

[1] Tribal funds in Treasury only. From 1840–1966, this was the only location of tribal trust funds. In 1967, $157,000,000 was in banks.

[2] Data for 1840–1925 not available.

[3] $167,000,000 on deposit in banks and Treasury securities.

Source: Data for 1840–1925 from Laurence F. Schmeckebier, The Office of Indian Affairs, Its History Activities and Organization (Institute for Government Research, The Johns Hopkins University, 1927), p. 191. Data for 1947–67 from combined statement of receipts, expenditures and balances of the U.S. Government for the fiscal year ended June 30, 1947–67.

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[3] Frances E. Leupp, *The Indian and His Problem* (Charles Scribner's Sons, 1910), p. 174.

[4] U.S. Department of the Interior, Bureau of Indian Affairs, Branch of Tribal Operations, Robert Pennington, "Summary of Indian Claims Commission Dockets," unpublished memorandum, January 1968, p. 2.

[5] Computed from Robert Pennington, *op. cit.* statement No. 5, pp. 1–3. It should be noted that Congressional legislation is necessary to finalize most of the awards of the Indian Claims Commission.

TABLE II.—DISTRIBUTION OF TREASURY DEPOSITS BY TRIBE, OCTOBER 1967

Amount	Number of tribes	Percent of tribes	Percent of tribal funds
Less than $10,000	64	36	0.24
$10,000 to $99,999	41	23	1.64
$100,000 to $999,999	47	27	10.50
$1,000,000 to $4,999,999	20	11	29.90
$5,000,000 or more	5	3	57.72

Source: Calculated from Bureau of Indian Affairs, "Statement of Trust Funds," unpublished tabulation, Oct. 1, 1967.

(The policy implications of per capita payments vis-a-vis economic development will be discussed in a later section of this paper.)

A second major income source for trust funds is from the earnings received due to the location of mineral deposits on Indian lands. Between 1949 and 1966, Indian tribes received $542,727,159 in income from oil and gas and $27,628,357 from other minerals.[6] As in the case of Indian Claims Commission Awards, much of the income (60 to 70 percent) accruing from mineral deposits on Indian lands is distributed in the form of per capita payments.[7]

The Navajo tribe has benefited substantially from reserves of oil and gas on reservation lands. More than $80 million obtained from these minerals has been placed in tribal trust funds. Another Indian group which has placed most of their mineral income in trust funds is the Tyonek Band of the Tlingit and Haida Tribes. In 1966 and 1967 this band received $14.4 million in mineral royalties and "bonus bids."

INVESTMENT OF INDIAN TRIBAL TRUST FUNDS

An act of January 9, 1837, provided that the Secretary of War should invest all money on which the United States had obligated itself to pay interest to the Indians. When the Department of the Interior was created in 1849, the control of Indian funds was transferred to the head of that Department. Owing to the lack of money in the Treasury, the capital of all funds was not invested for some years, Congress making an annual appropriation for the payment of the interest, but apparently by the late 1850's, money was available to invest the principal.[8]

In general, the funds were invested in United States or State bonds and railroad securities. By the act of June 10, 1876, the custody of the bonds was transferred to the Treasurer of the United States, who was authorized to make all purchases and sales of bonds and stocks, but the control of the investment remained with the Secretary of the Interior. In 1880, the practice of retaining the money in the Treasury was begun, a permanent indefinite appropriation being made to pay the interest prescribed by treaty or statute. As the bonds became due the proceeds were deposited in the Treasury and by June 30, 1898, the last had been disposed of.[9]

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[6] Calculated from Henry W. Hough, *Development of Indian Resources* (World Press, 1967), p. 118.

[7] The Osage Tribe in Oklahoma has distributed approximately $120,000,000 from mineral income in per capita payments during 1949–66. For further information see Hough, *Development of Indian Resources*, *op. cit.*, p. 120, and *The Osage People and Their Trust Property*, a Field Report of Bureau of Indian Affairs, Anadarko Area Office, Osage Agency, April 1953.

[8] Schmeckebier, *op. cit.*, p. 191.

Since 1818, the tribal trust funds deposited in the Treasury have drawn 4 percent simple interest, which is placed in a separate interest account. (See table I.)

Beginning in July 1966, the Bureau of Indian Affairs, in consultation with the tribes initiated a program for increasing the rate of return by channeling tribal trust funds into improved investments, in Government securities and commercial bank certificates of deposit which are secured by bond or commercial collateral, approved by the Treasury Department. The rate of return on these investments has been 5 to 6 percent (see table III) thus increasing by over $2 million the earnings for participating tribes.

In September 1968, Indian tribes had $157 million in tribal funds on deposit in various banks, plus an additional $10 million in Treasury securities. Since tribal funds totaled about $300 million in 1968, this indicates that slightly less than one-half the tribal funds remained on deposit in the Treasury.

TABLE III.—APPROVED INVESTMENTS, SELECTED TRIBES

Name of tribe	Type of investment	Amount invested	Rate of return (percent)
Tlingit and Haida	Certificates of deposit	$5,500,000	6.25
Do	Treasury bills	1,051,000	5.55
Navajo	Certificates of deposit	39,987,832	5.90
Do	Treasury notes	8,067,500	5.50
Do	Treasury bonds	181,500	4.00
California Indians	Certificates of deposit	27,897,501	5.50
Ute Mountain	do	10,000,000	6.25
Do	Treasury bonds	197,000	4.00
Mescalero Apache	Certificate of deposit	5,933,016	5.70
Creeks	do	4,772,916	5.70
Utes (Utah)	do	6,925,000	5.65

[1] Weighted average of several certificates of deposit, Treasury bills, notes, and bonds.

Source: U.S. Bureau of Indian Affairs, "Investments as of Sept. 30, 1968," unpublished tabulation provided by Assistant Commissioner of Indian Affairs Norwood, November 1968.

Indian tribes do not always purchase certificates of deposit from banks which pay the highest interest rate. For example, one tribe in Montana purchased certificates of deposit paying 5 percent interest at a local bank although out-of-State banks were willing to pay as much as 6¼ percent. The tribal leaders preferred the local bank because they felt that a substantial deposit would make the bank more amenable to extending loans to individual tribal members.

OTHER INVESTMENTS

Several Indian tribes, with the supervision of the Bureau of Indian Affairs, and in consultation with private financial analysts, have begun to invest some of the funds, which were previously deposited in the

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[9] During the period in which the funds were invested, the Government lost a considerable sum through the embezzlement of bonds valued at $890,000 from the Interior Department in the early part of 1861, and through the default in payment of interest on others amounting to $1,247,666. Practically all of the bonds in default were those of States which seceded in 1861, although Arkansas had never paid interest on a refunding issue of 1842 for the amount due at that time for principal and interest. In 1862, an appropriation was made to place $600,412 to the credit of certain tribes in lieu of the bonds that had been stolen. In 1894, the investment account was finally closed by reimbursements of $83,000 on account of stolen bonds and of $1,247,666 on account of bonds not paying interest. In addition to the principal sums mentioned above, enough money was appropriated each year to pay the interest.

Treasury, into common stocks and mutual funds.[10] Although there are little data available on the magnitude of these investments, the Navajo tribe has been the most active. The tribe has recently established a $10 million educational fund with money invested in common stocks and mutual funds.[11]

It is likely that investments of this type will increase over time. Not only is the Bureau of Indian Affairs more flexible regarding the kinds of income earning assets which may be purchased, but the increasing financial sophistication of some tribal leaders is creating a desire that these tribal funds earn the highest rate of return possible.

Some Policy Implications

The existence of several hundred million dollars in tribal trust funds under the guardianship of the Bureau of Indian Affairs (via the Secretary of the Interior) raises some important questions concerning Federal Indian policy. First, is the Bureau, as legal guardian of these funds, following a prudent course regarding investment of tribal moneys? Second, should the Federal Government be in the position of guardian (in effect telling the Indians what to do with their money?)[12] Third, what use is being made of these funds to assist the economic development of the tribes?

It would appear that in recent years the Bureau of Indian Affairs has made a determined effort to secure the highest rate of return possible on tribal trust funds that is consistent with a policy of low risk of capital loss. Moreover, the Bureau is increasingly willing to allow tribes to invest funds in stocks and mutual funds utilizing the advice of private investment consultants.[13]

Thus, given the fact that the Bureau of Indian Affairs seems to be doing a competent job regarding financial management of the Indian trust funds, is it in fact serving the long term interests of the tribes by continuing in this role?

There are several arguments which can be made in favor of continuing the guardianship role of the Bureau of Indian Affairs vis-a-vis Indian trust funds. First, because of the low level of schooling of most reservation Indians, including tribal officials, it is likely that they would lack the financial sophistication to make wise investments. Moreover, without Federal supervision, unscrupulous investment consultants would be able to take advantage of the tribal leaders. It is likely that this argument was quite valid in earlier years when illiteracy was high among reservation Indians, and relatively few spoke English. With the rapid increase which has taken place in the level of education of reservation Indians since 1940, the argument clearly has less weight than previously.

A second reason for continuing guardianship is that most tribal leaders prefer this arrangement since it frees them from the responsibility of having to worry about developing an adequate investment program. While the argument may be correct, it could be used to support a system of *voluntary* guardianship instead of *compulsory* guardianship. That is, those tribes who wish to have the Bureau of Indian Affairs manage their funds could continue to do so, while those who wish to manage their own funds could sever the present relationship.[14]

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[10] The Bureau of Indian Affairs does *not* recommend which stocks to buy or in which mutual funds the tribes should invest their funds. However, the Bureau does determine whether or not the financial advisors utilized by the tribe are capable. Moreover, the Bureau does hold a veto power over whether the monies can be transferred from one type of earning asset into common stocks or mutual funds; or if the income has just been realized, whether or not it can be invested in stocks or mutual funds.

[11] Interview with Assistant Commissioner of Indian Affairs Norwood, November 1968.

[12] Not only must all investments of trust funds be approved by the Bureau of Indian Affairs (in practice most tribes leave it to the Bureau to invest the money for them), but major expenditures of monies from the trust funds must be approved by the Secretary of the Interior.

[13] One could not expect the Bureau of Indian Affairs to purchase stocks or mutual funds for the tribes since this would put the Government in the position of seeming to believe that some companies are better investment prospects than others.

Perhaps the most important argument which can be made against the present arrangement is that the money is the property of the Indians and, as such, they should be able to control its consumption or investment. Thus, if a tribe through a special referendum or through elected officials decided to invest the money in a project which Government officials felt had little chance of returning the original investment, the decision should still remain with the tribe. On the other hand, the trust fund is the principal asset of many tribes, and the dissolution of this property as a result of bad investments would leave the tribe destitute.[15] Since this is a possibility, it can be maintained that the financial disaster which could befall Indian tribes if bad investments were made is a mistake which the Government in good conscience cannot allow the tribes to make.

On the whole, the Bureau of Indian affairs is maintaining a paternalistic role in regard to management of tribal trust funds. By continuing to serve as the master banker for the Indian tribes, it is perpetuating a system of indefinite dependence by the tribes on the BIA. Since one of the goals of the present Commissioner of Indian Affairs is to increase the self-sufficiency of the Indian tribes, it is clear that this objective cannot be fully accomplished by permitting the Bureau to continue as guardian of the tribal trust funds. This point, while certainly valid in theory, does not have to be as valid in practice. If the Bureau of Indian Affairs allowed those tribes, which desired to do so, to work out their own investment and expenditure plans (as they are doing with the Navajos), using private consultants with little or no interference from the Bureau, then it could be maintained that for those tribes the Federal government vis-a-vis the tribal funds would be guardian in same only.[16]

A final point which must be made in consideration of Federal policy regarding Indian trust funds is that they must be seriously considered in any future discussion of possible termination of the Indian tribes. If it is felt that a tribe cannot do an effective job of managing its trust funds, the Government, *for that reason alone*, would be committing a serious policy error if it went ahead with termination proceedings without attempting to secure competent nongovernmental investment counseling for the tribe.[17]

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[14] Not all tribes wish to have the Bureau continue their role as guardian of the trust funds. The author interviewed several Indian leaders who expressed resentment at the present state of affairs

[15] Many tribes with little or no current income have received settlements from the Indian Claims Commission. These settlements are used to create the tribal trust fund. Other tribes have substantial current income so that possible business losses could be replaced.

[16] While it is true that paternalism is minimized if the Bureau of Indian Affairs authority is used actively, discretionary limitations of power can often be temporary, particularly if there is a frequent change in the Commissioner of Indian Affairs.

[17] The Menominees of Wisconsin and the Klamaths of Oregon, two tribes that were terminated in the 1950's, suffered severe depletion of individual and tribal assets after Bureau supervision was ended.

TRUST FUNDS AND ECONOMIC DEVELOPMENT

During 1966, the Indian tribes invested $58 million of their own funds in economic development projects, including $12 million in reservation industry.[18] However, a major portion of Indian financial resources, including current income, is either distributed in per capita payments or deposited in banks or the Treasury. Thus, many tribes have declined to commit a significant portion of their financial resources to economic and industrial development. There are several reasons for this. First, the majority of tribal leaders are relatively untrained in matters of business and finance and are understandably reluctant to commit funds to tribal enterprises which would likely have to be managed and operated by non-Indians.[19] Very few Indians have had any experience operating a business especially a large scale one.

Second, on some reservations, Indians have divided themselves into factions with respect to the distribution of tribal income or the allocation of trust funds. One group may insist on dividing the income among members of the tribe by means of a per capita payment. This is especially true among older Indians who may not be interested in possible long-term gains which could perhaps be realized by investing the money in industrial development.[20]

Another group may wish to spend the money on improvement of human resources through expenditures for higher education and through investment in employment-creating and income-earning projects. Often no action is taken and the money remains on deposit in the Treasury or in banks.[21] This is because tribal leaders prefer to reach a consensus of opinion before a decision is made. If a consensus cannot be attained, the decision is postponed.

A third reason that a larger fraction of tribal funds is not committed to economic development is that it is not clear whether the rate of return from business or industrial development projects would be greater than the rate of return from investment in Treasury certificates or time deposits. This position receives some support from the various industrial feasibility studies undertaken by the Area Redevelopment Administration and the Bureau of Indian Affairs which indicate that in most cases the expected rate of return would be low.

However, this approach can be criticized as short-sighted. The biggest problem on an Indian reservation is unemployment; there is a great need to put people to work. Thus, for tribes with several million dollars in trust or bank deposits, investment in economic development projects with low rates of return would be preferable to the mental and physical degeneration which results from prolonged unemployment.[22] Long run human resource development is superior to the short run interest earnings being derived at the present time.

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[18] U.S. Bureau of Indian Affairs, "Indian Affairs, 1966, A Progress Report from the Commissioner of Indian Affairs" (Washington, D.C., 1966).

[19] Most of the industrial feasibility studies done on Indian reservations in the 1960's recommended that management initially be non-Indian.

[20] Moreover, if annual incomes are extremely low, pressure for per capita payments will also come from younger members of the tribe.

[21] A Northwest tribe recently received a $600,000 award for a claim before the Indian Claims Commission. However, because of internal strife between tribal members as to the disposition of this award (many insist on per capita payments), it may be years before a decision is reached.

It is not clear what portion of the blame BIA deserves for the fact that so small a portion of the tribal trust funds have been used for economic development. If the tribes wish to retain their funds in banks or the Treasury, it might appear that the Bureau, as guardian, has no business trying to convince the tribe otherwise. However, if the tribes desired to withdraw substantial amounts from the trust funds and were prevented from doing so because of opposition by the Bureau to the project, then it would appear that the latter could be shortsighted. There is no evidence that the Bureau has ever prevented a tribe from using its trust funds for development; in fact, several tribes such as the Navajo have used tribal funds for such purposes. However, there is no evidence that the Bureau has ever *Encouraged* the tribes to use their funds for development. It appears that the Bureau has taken a narrow view of its guardianship role concerning tribal funds; that is, to obtain the highest rate of return with a minimum of risk. Since development projects may deviate from this objective, they are not encouraged.

Those tribes with several million dollars in tribal trust funds should be encouraged to use some of these funds for development purposes (25 tribes have over $1 million in tribal trust funds with five tribes having over $5 million) in projects planned jointly by the tribe and the Bureau of Indian Affairs (or by the tribes exclusively). If the tribes fail to show interest, then the Government would at least have the satisfaction of knowing that it was not the latter's shortsightedness which was the stumbling block to development.

Because of the unequal distribution of trust funds among the tribes, there is great variation in their ability to finance development by utilizing these funds as a source of capital. For example, the Navajo with $80 million in tribal funds, have aided reservation development by construction of water and sewer lines through electrification (at tribal expense) of the more remote parts of the reservation, by subsidization of industry, and through the operation of tribal enterprises, including a forest products industry and tourist facilities.

However, the Pine Ridge Sioux, with 12,000 members is wholly dependent on outside financing. The tribe has only $58,000 in trust funds. Geological surveys indicate that the reservation may be favorably situated regarding oil and gas potential. If commercial exploitation were undertaken, the tribe would be able to utilize the accrued revenue for development.

ECONOMIC DEVELOPMENT AND PER CAPITA PAYMENTS

It was pointed out above that the bulk of the income derived from reservation mineral wealth and a large fraction of the awards from the Indian Claims Commission have been distributed in the form of per capita payments. There are several reasons why this policy is questionable.

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[22] Thus, the Navajo Indian Tribe has invested millions of dollars in public works project and additional funds in tribal enterprises with low rates of return because without these expenditures, jobs on some parts of the reservation would be nonexistent. However, if the *Government* were willing to make reasonable outlays to develop a reservation infrastructure, including public works projects, then it would not be as necessary for the tribes to utilize their trust funds for this purpose.

First, distribution of tribal assets in the form of per capita payments eliminates the opportunity to utilize the money for long-term reservation development. Since incomes of individual tribal members are frequently very low, personal saving can make little or no contribution to reservation development. Thus, the "exogenous" sources of income (minerals or awards by the Indian Claims Commission) are frequently the only possible sources of development capital.

Second, many Indians, who are unable to find suitable employment on the reservation, are nevertheless reluctant to leave because they do not want to miss a per capita payment.[23] From an economic standpoint this is irrational. Not only do many tribes give per capita payments to those who have left the reservation, but even if this were not the case, the economic sacrifice of remaining on the reservation (in terms of income lost) could seldom be made up by a one-time per capita payment which rarely exceeds $3,000.

Finally, because of the traditional poverty of the reservation Indian and the concomitant low levels of schooling, many of these individuals do not know how to manage large sums of money effectively. This problem is made worse by the high pressure salesmanship of non-Indian merchants who flock to the Indians with their wares as soon as a large per capita distribution is made.[24]

On the other hand, since the money belongs to the various tribes, they should have the right to decide its allocation. Thus, if the majority of tribal members wish per capita payments, shouldn't this decision be a guide to policy? Congress has been especially sympathetic to this view and has usually permitted per capita distribution of Indian Claims Commission awards if the majority of tribal members favor them. Similarly, the Secretary of the Interior has permitted per capita payments from current mineral income.

While the poverty of the reservation Indian no doubt creates a strong desire to realize immediately through per capita payments the benefits of an Indian Claims Commission award or other income, many would argue that the claims of future generations should also be considered. Thus, the Government should be as concerned about succeeding generations of Indians as today's Indians. If this is true, then it may be a wise policy to only pay out a portion of an Indian Claims Commission award or mineral income in the form of per capita payments reserving the remainder for other purposes.

While from the viewpoint of economic development, a strong case can be made for discouraging or limiting per capita payments, it is most important in the long run to leave the decision regarding investment or consumption of trust funds or current tribal income to the tribes. Ideally, the Federal role shoud be restricted to informing the tribe of the consequences of alternative decisions. To insure that Indian leaders would be able to evaluate this advice effectively, courses in financial and business management should be made available to tribal leaders, either as part of an expanded adult education program or through universities located near the reservations. These courses would not only permit the participants to evaluate advice (whether from private consultants or the BIA), but would give them the knowledge to plan, if they so desired, *their own development projects.*

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[23] Some tribes distribute per capita payments to all those individuals or the heirs of those individuals on the tribal roll as of a certain past date. Others, after the award of the Indian Claims Commission is finalized, draw up a tribal roll and distribute the money to those who are on the new roll.

[24] The best example of this is the Osage Indians in Oklahoma, some of whom bought new cars every time a per capita distribution was made (every 3 months). However, some of their per capita payments have been used for housing and education.

THE CROW FAMILY PLAN

One of the more progressive distributions of an Indian Claims Commission award occurred in connection with the Crow Tribe in Montana. A total of $10,242,984 was awarded to the Crow Tribe in 1961. The amount remaining after deduction of attorney's fees was $9,238,500. The Crow Tribal Council, with the approval of the Secretary of the Interior, allocated the money as shown in table IV.

Under the plan each family received an average of $3,019.[25] The plan required that money could only be spent for capital goods, durable consumer goods or for personal improvement via, for example, expenditures on health and education. Each family was required to submit a detailed proposal for use of family plan funds to the Bureau of Indian Affairs, before moneys were released. Funds could not be used for automobiles, vacations, daily living expenses or to pay debts incurred prior to the approval of the family plan.

It appears that virtually all of the expenditures were restricted to goods which it was permissible to purchase. Thus, four-fifths of the funds were used for durable consumer goods such as additional rooms in homes or renovation of homes, household furnishings, and water and sanitation facilities. Occupancy decreased from an average of 2 persons per room to 1.2 persons, a reduction of 40 percent.[26] Most of the remaining outlay was for capital goods. These were mainly purchased by ranchers and included livestock, machinery, and equipment. A relatively small part of the funds were spent for education, health, medical and other personal improvement purposes. From all indications this program has worked well and could be emulated in those cases where there is strong pressure for per capita payments.[27]

TABLE IV.—FAMILY PLAN ALLOCATION OF FUNDS, CROW TRIBE

Type of allocation	Dollars	Percent
1. Per capita payment (winter relief measure)	1,193,500	12.9
2. Family plan, $1,000 to each enrolled Crow	4,336,000	46.9
3. Tribal land purchase plan	1,000,000	10.8
4. Expansion of tribal credit program	257,000	3.0
5. Competent lease loans	1,000,000	10.8
6. Economic development of Crow Tribe	1,000,000	10.8
7. Educational purposes	200,000	2.2
8. Law and order	100,000	1.1
9. Construction of tribal headquarters	120,000	1.3
10. Unobligated funds	14,000	.2
Total	9,220,500	100.0

Source: U.S. Department of the Interior, Bureau of Indian Affairs, Missouri River Basin investigations project, "Family Plan Program, Crow Reservation, Montana," May 1967, p 1 (mimeographed).

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[25] U.S. Department of the Interior, Bureau of Indian Affairs Missouri River Basin Investigations Project; Billings, Mont., "Family Plan Program Crow Reservation Montana," May 1967, p. 2.

[26] Missouri River Basin investigations project, *op. cit.*, p. 3.

[27] There is some evidence that a few families evaded the intent of the family plan by first purchasing durable goods and then after a short period selling them and using the money for unapproved purposes.

FUTURE GROWTH OF INDIAN TRIBAL TRUST FUNDS

It seems likely that the moneys held in trust for Indians by the Bureau of Indian Affairs will continue to grow but at a slower pace than recently. The docket has closed on the filing of claims before the Indian Claims Commission, and the Commission expects to have all claims settled by 1973. Thus, an important source of trust funds will be gone. Income from oil and gas has declined slightly from the peak levels of the late 1950's, but there are indications that some tribes are favorably situated with regard to oil and gas possibilities, such as the Standing Rock Sioux, the Cheyenne River, Rosebud, Brule, Crow Creek, Yankton, Pine Ridge Sioux, and several tribes in the Puget Sound area of Washington State.[28]

There will probably be a continuing decline in trust fund deposits in the Treasury as more of the funds are deposited in common stocks or certificates of deposit. If the rate of return on these latter assets continues to be much higher than the Treasury rate of 4 percent, then it is quite conceivable that virtually no Indian trust funds will be on deposit in the Treasury by the early 1970's.

Generally speaking, the possibility of utilizing tribal income and trust funds for reservation development remains unexplored. To encourage the use of these funds as a source of development capital, the BIA could plan with each tribe a description of the tribe's long-term goals with respect to outmigration, political evolution, and economic and social development. Included with the description of tribal goals would be an indication of what assets are on hand, and what additional funds are needed to reach the goals in the intermediate future (25 to 30 years). This type of planning would permit assessment of the year-by-year accomplishments and needs of each tribe relative to its own goals as well as the required Federal contribution to accomplish this purpose.

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[28] Hough, *Development of Indian Resources*, op. cit., pp. 128-129.

FEDERAL ENCROACHMENT ON INDIAN WATER RIGHTS AND THE IMPAIRMENT OF RESERVATION DEVELOPMENT

By WILLIAM H. VEEDER*

FOREWORD

In the arid and semiarid regions of the Western United States, adequate rights to the use of water resources are a particularly crucial element in economic development. The responsibility for protecting the water rights of American Indian reservations rests with the Interior and Justice Departments. William Veeder argues that the conflicting responsibilities of these Departments make it virtually impossible for them to adequately fulfill their responsibility to the Indian reservations. He recommends that the responsibility for protecting the Indian water rights should be placed in an agency independent from the Interior and Justice Departments, and that this agency should move promptly to inventory Indian water rights and to determine the highest and best uses to which these valuable rights can be put.

Summary

1. American Indian Reservations in the western United States contain invaluable natural resources. These include the land of which they are comprised, minerals, forests, lakes, streams and other sources of water which arise upon, border, traverse or underlie the Reservations.

2. Economic development of the western Reservations is inseparable from Indian rights to the use of water, which in turn are the most valuable of all natural resources in the arid and semiarid regions. Those rights are the catalyst for all economic development. Without them the Reservations are virtually uninhabitable, the soil remains untilled, the minerals remain in place, and poverty is pervasive.

3. Since time immemorial the Indians' water resources were inextricably a part of their way of life; indeed, a prime feature of their sustenance. Highly sophisticated irrigation systems were developed along the Gila River by the Pimas and Maricopas. Menominees harvested their wild rice, used the streams for travel, fishing and hunting. The Mohaves, Quechans and other Colorado River Indians depended on the stream's annual Nile-like floods to irrigate their crops. The Yakimas lived upon and traded salmon taken from the Columbia, as

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NOTE: The analysis and conclusions in this paper are those of the author, and do not necessarily represent the position of the Bureau of Indian Affairs or the Department of the Interior.

did the Northern Paiutes—the fisheaters—who took the famous Lahanton cutthroat trout from the Truckee River and Pyramid Lake—their species destroyed by the Bureau of Reclamation.

4. The Indian *Winters Doctrine Right* to the use of water in the streams or lakes which arise upon, border, traverse or underlie their Reservations, have been accorded by the Supreme Court and other courts a prior, paramount and superior status on the streams for the present and future economic development of the Western Reservations.

5. By the Constitution of the United States there was created a relationship between the Nation and the American Indians of transcendent dignity. That relationship of great dignity had its genesis in the policies adhered to by the European sovereigns who colonized this Continent and it was firmly established during the harsh and bitter years of the Revolutionary War and the years which were to ensue prior to and including the adoption of the Constitution.

6. It has been declared that the relationship existing between the American Indians and the Nation "resembles that of a ward to his guardian"—a trust relationship with all of the express and implied obligations stemming from it. Only the uninformed ascribe to that trust a demeaning connotation in regard to the American Indians.

7. Great stress must be applied to the nature of the Indian trust property, including Indian rights to the use of water.

(a) It is *private property,* legal title to which is held by the United States in trust for the American Indians as beneficial holders of equitable title.

(b) Indian property is *not public property* as is the other property of the Nation.

8. Plenary power and responsibility under the Commerce Clause of the Constitution reside with the Congress to effectuate the trust relationship between the United States and the American Indians.

9. Congress is likewise invested by the Constitution with plenary power over the "public lands," all other lands, all rights to the use of water, title to which resides in the Nation. These lands and rights to the use of water are to be administered for the Nation as a whole. It is imperative that the nature of the right, title, interests and obligations of the Nation in regard to these properties held in trust for the Nation as a whole be sharply distinguished from the lands and rights to the use of water of the American Indians.

10. Congress in the exercise of its plenary power over the Nation's lands and rights to the use of water has invested the Department of the Interior with broad authority to administer, develop, sell, dispose of, and otherwise to take all required action respecting those lands and rights to the use of water. Agencies within the Department of the Interior carrying out the will of Congress in regard to those properties held for the public as a whole include but are not limited to: The Bureau of Reclamation, Bureau of Land Management, National Park Service, Bureau of Outdoor Recreation and the agencies generally responsible for the propagation and protection of fish and wildlife.

11. Administrators, engineers, scientists, within the Department of the Interior, all acting within the scope of the authority vested in the Secretary of the Interior, are:

(1) Charged with the responsibility of fulfilling the Nation's trust status in regard to the Indian lands and rights to the use of water, which, as stated, are private in character, to be administered solely for the benefit of the Indians;

(2) Charged with the responsibility of administering lands and rights to the use of water claimed in connection with reclamation projects, administration of grazing districts, and other land uses requiring the exercise of rights to the use of water; fish and wildlife projects, recreational areas and other activities, all of which require rights in the streams.

12. (a) Lawyers in the Department of the Interior directly responsible to the Solicitor, in whom resides the obligation of performing the "legal" work for that Department; all of the agencies of it, including the Bureau of Indian Affairs, Indians and Indian Tribes, are constantly confronted with the sharp conflicts of interests between the Indian land and rights to the use of water, and the numerous other agencies referred to that likewise make claims to those waters and contest the rights and claims of the Indians to them;

(b) Lawyers in the Department of Justice directly responsible to the Attorney General, the Nation's chief law officer, have the responsibility:

> (1) To defend, protect, preserve and have adjudicated, title to the lands of the Indians and their rights to the use of water, and otherwise to act as lawyers for the trustee obligated to perform with the fullest degree of loyalty to the Indians;
>
> (2) To proceed as an adversary against the Indian claims for the seizure of their lands and rights to the use of water, seeking to limit or otherwise defeat the claims of the Indians predicated upon the laws which other attorneys of the Justice Department are required effectively to espouse and advocate on behalf of the Indians;
>
> (3) To perform legal services in regard to lands and rights to the use of water in streams and other water sources where the Indian rights are in conflict with claims of other agencies of the United States.

13. Both the administrators of the Department of the Interior and the lawyers of both Interior and Justice owe the highest degree of ethical, moral, loyal and equitable performance of their trust obligations to the American Indians. They are charged, moreover—as professionals—with the highest degree of care, skill and diligence in executing their broad assignments for the protection, preservation, administration and legal duties respecting Indian trust properties including, but not limited to, the invaluable Indian *Winters Doctrine Rights* to the use of water.

14. Conflicting responsibilities, obligations, interests, claims, legal theories—indeed, philosophies—oftentimes prevent the Interior and Justice Department administrators, planners, engineers and lawyers from fulfilling the trust obligation [which the Nation owes] to the American Indians in regard to natural resources, particularly in the complex and contentious field of Indian rights to the use of water in the arid and semiarid regions of western United States. Failure by those Departments, agencies and personnel to fulfill the Nation's obligation to protect and preserve Indian rights to the use of water

includes, but most assuredly is not limited to: (a) Lack of knowledge of the existence, or the nature, measure and extent of those rights to the use of both surface and ground waters—refusal to recognize Indian rights are private rights to be administered separate, apart and independent of the "public rights" of the Nation as a whole in identically the same manner as other private rights are protected and preserved; (b) Lack of timely action to preserve, protect, conserve and administer those rights; (c) Inability or reluctance at the decisional level to insist upon recognition and preservation of Indian rights to the use of water when to do so would prevent the construction—and/or administration in the manner desired—of a reclamation or other project conflicting with the Indians for water, the supply of which is insufficient; (d) Attempted subordination, relinquishment, or conveyance of Indian rights to the use of water which are in conflict with other claims, Federal, State or local; (e) Failure to assert rights, interests and priorities of the Indians on a stream or project when to do so would limit the interests of non-Indians; (f) Opening Reservations to non-Indian occupancy with the seizure of Indian land and rights to the use of water, with or without the payment of just compensation; (g) The imposition of servitudes, easements, and illegal occupancy or use of Indian lands and rights to the use of water.

15. Economic development of the American Indian Reservations in western United States, due largely to conflicting interests within the Interior and Justice Departments, or vacillating policies—a natural consequence of conflicting interests, responsibilities, and obligations within the Federal Establishment—has been (a) prevented by the abridgment or loss of Indian rights to the use of water; (b) intentionally prevented in whole or in part, or deferred in whole or in part, by the refusal to permit development of Indian lands with rights to the use of water.

16. Irreparable damage to the American Indians in western United States has ensued by reason of the consequences flowing from the conflicts described above. The Indians have suffered from extreme poverty, with the attendant ills of malnutrition, high infant mortality rate, reduced life expectancy, disease, and the shattering loss of human dignity which stems from poverty and deprivation of the necessities of life.

Conclusion

Economic development of the American Indian Reservations in western United States will continue to be prevented or severely curtailed in the absence of drastic changes in the laws and policies which would eliminate conflicting rights, responsibilities and obligations which presently exist among the several agencies of the National Government, all as reviewed in the accompanying memorandum and the summary set forth above.

Recommendation

Congress should enact legislation which would place in an agency independent from the Department of the Interior and the Department of Justice the full responsibility for the protection, preservation, administration, development, adjudication, determination, and control, including but not limited to all legal services required in connection with them, of the lands and rights to the use of water of the American Indian Reservations in western United States.

In furtherance of economic development of the American Indian Reservations in western United States it is imperative that there be undertaken an inventory of all of the Indian rights to the use of water in the streams and other sources of water arising upon, bordering upon, traversing or underlying their lands. This inventory should be undertaken with the objective of ascertaining, to the extent possible, the existence, character and measure of the rights as they relate to the present and future development of the Reservations. It is equally important to determine the highest and best use which can be made of these invaluable rights to the use of water and to chronicle those rights as they relate to each water source, indicating the highest and best present use to which they may be applied. They should likewise be evaluated from the standpoint of their maximum potential in the future by reason of the fact that those rights must be exercised in perpetuity and in contemplation of the ever-changing environment of western United States with its increasing population and water demands.

There follows the memorandum on which the preceding summary, conclusion and recommendation are predicated:

* * * * * * *

FOREWORD

In the arid and semiarid western United States, where most Indian reservations are located, water is a critical catalyst for all economic development. Without it, soil remains untilled, minerals remain in place, and habitation itself is difficult. Suffice to say, without water reservation lands or any other lands are virtually without economic value.

The main thrust of this paper is that non-Indian demands on an already limited water supply have severely impaired the economic growth potential for many reservations. Moreover, non-Indian interests have made, and are making, claims on water which, it is believed, belongs to Indians. That non-Indian claims on such water are usually successful is due in large measure to the effectiveness with which such interests influence the workings of the Federal Government--which in fact is charged to protect Indian rights and to support and encourage Indian development.

To fully understand the abridgement or loss of Indian water rights requires an understanding of the legal aspects of:

1. the Nation's trust relationship with the Indians and Indian Tribes;
2. the character of Indian rights to use of water.

Because rights to water are inextricably related to reservation lands, Indian titles to land and the use of water are discussed together.

I. FEDERAL EXPRESSIONS OF INTENT CONCERNING INDIAN PROPERTIES AND NATURAL RESOURCES

On September 12, 1968, Senate Majority Leader Mansfield placed in the Congressional Record Concurrent Resolution No. 11 entitled

"National American Indian and Alaska Natives Policy Resolution,"[1] together with excerpts from Report No. 1535, explaining the purpose of the resolution. The report[2] stated that: "The resolution would assure our Indian citizens that Federal programs * * * will be concentrated where the problems are most acute—on the reservations," and further that it is the "sense of Congress that Indian and Alaska native trust property continue to be protected; * * * that efforts be continued to develop natural resources."

Explicitly, the Concurrent Resolution states that:

> "American Indian and Alaska native property will be protected; that Indian culture and identity will be respected; * * * that continued efforts will be directed to maximum development of natural resources."

This Resolution clearly attempts to establish Federal commitment to, and recognition and protection of Indian and native Alaskan rights to their natural resources.

During the presidential campaign of 1968 President Richard M. Nixon stated:

> "Historically, these Native Americans * * * have been deprived of their ancestral lands and reduced by unfair federal policies and demeaning paternalism to the status of powerless wards of a confused 'great white father.' "[3]

To correct the injustices of the past, President Nixon continued, "My administration will promote the economic development of the reservation by offering economic incentives to private industry to provide opportunities for Indian employment and training."

In announcing national goals for the American Indian, former President Johnson said that our goal must be:

"Freedom of choice: An opportunity to remain in their homelands, if they choose, without surrendering their dignity * * *."[4]

There is a long history of similar Congressional and Executive declarations. More than a decade ago, in a case where Federal actions contradicted such declarations, a U.S. circuit judge observed:

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[1] *Cong. Rec.* (Sept. 12, 1968) S. p, 10634.

NATIONAL AMERICAN INDIAN AND ALASKA NATIVES POLICY RESOLUTION

The concurrent resolution (S. Con. Res. 11) National American Indian and Alaska natives policy resolution was considered, and agreed to, as follows:

* * * * * * *

Resolved by the Senate (the House of Representatives concurring), That it is the sense of the Congress that—

(1) the deplorable conditions of American Indians and Alaska natives can only be alleviated through a sustained, positive, and dynamic Indian policy with the necessary constructive programs and services directed to the governing bodies of these groups for application in their respective communities, offering self-determination and self-help features for the people involved; and that our Government's concern for its Indian citizens be formalized in a new national Indian policy so that beneficial effects may be continued until the day when the Nation's moral and legal obligations to its first citizens—the American Indians—are fulfilled;

* * * * * * *

(d) American Indian and Alaska native property will be protected; that Indian culture and identity will be respected; that the necessary technical guidance and assistance will be given to insure future economic independence; that continued efforts will be directed to maximum development of natural resources; * * *

[2] *Cong. Rec.* (Sept. 12, 1968) S. p. 10634.

[3] Statement by Richard M. Nixon on September 27, 1968.

[4] 114 *Cong. Rec.* No. 36 (March 6, 1968), pp. S. 2311-2316.

> "The numerous sanctimonious expressions to be found in the acts of Congress, the statement of public officials, and the opinions of courts respecting 'the generous and protective spirit which the United States properly feels toward its Indian wards,' * * * and the 'high standards for fair dealing required of the United States in controlling Indian affairs,' are but demonstrations of a gross national hypocrisy." [5]

A primary objective of this study is to demonstrate how the expression of the highest ideals by the Congress and the Executive have fallen far short of accomplishment by reason of policies and conflicts between agencies and personnel of the Federal Government. To that end it is important to understand how those ideals developed and the constitutional basis for those concepts which lends substance to them. It should also be realized, however, that this Nation with its Old World background has failed to recognize that Indians and native Alaskans have values which all too often have been frustrated or totally suppressed.

I. Rapport of American Indians With Their Homeland Must Not Be Ignored in Economic Development of Reservations

A man's heart is where his treasure lies. Frequently the American Indians occupying Reservations view their natural resources as a treasure, and seek to avoid destructive exploitation. Failure to take cognizance of the Indians' concept of nature and their relationship with the lands they and their ancestors occupied is to ignore a crucial aspect of any development program and to impair potential economic development.

The rapport between the Indians and the land is difficult to understand, much less describe. In a materialistic society the affinity between the Indians and their mountains, lakes, and rivers has been all too frequently disregarded.

The Mission Range, its streams and beauty have a worth to the Flathead Tribes that cannot be measured. Mohave Indians have names for all parts of their valley and segments of the Colorado River which traverses it. A map recently prepared designating those areas in the valley and segments of the River with Mohave names, and interpretations, goes far in explaining the Indian attachment to it. History records the resolute rejection by most Mohaves to move them from their core homeland. Like the White Mountain Apaches who revere sections of their forests, the mountains surrounding Mohave Valley are frequently referred to by the Indians in spiritual terms. The great wilderness on the slopes of Mount Adams has a meaning to the Yakimas understood only in the Long House.

Law is reflective of the mentality which formulates it. Hence the law applied to the Indian lands and rights to the use of water does not embrace intangibles. However, economic development need not connote smoke stacks, filthy air and water. To the fullest extent possible economic development should take cognizance of the special identification of the American Indians with their lands, lakes, and streams. If economic development simply submerges Indians in the so-called main stream of society, the present efforts most assuredly will have failed.

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[5] Judge Pope in his first opinion in *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321, 338 (CA6, 1956); Appellees' cert. denied 352 U.S. 988 (1956); 330 F. 2d 897 (1965); 338 F. 2d 307; Cert. denied 381 U.S. 924 (1965).

III. THROUGHOUT THEIR HISTORY AMERICAN INDIANS HAVE USED THE WATERS OF THEIR RIVERS, LAKES AND STREAMS FOR SUSTENANCE AND SHAPED THEIR LIVES TO THE ENVIRONMENT

As reviewed above, the Concurrent Resolution 11 expresses the "sense of Congress that Indian and Alaska native trust property continue to be protected; * * * that efforts be continued to develop [their] natural resources."

The Executive pronouncements mentioned above fully recognize and would implement the means for the protection of trust property including the natural resources, thus aiding the economic development of the Indian Reservations. The meaning of the term trust property, the legal aspects of it, what gave rise to it, and the activities required in the administration of that trust property are crucial to this consideration. Antecedent to that phase of the consideration, brief reference will be made to Indian use of the waters of the rivers, lakes and streams and their adjustment to the frequently harsh environment in which they lived by reason of that use.

This Nation's history following the War of Independence, with the accession of huge land areas from France, Great Britain, Spain and Mexico, lends meaning to the "trust" to which Congress makes reference in Concurrent Resolution 11. Virtually all of the lands acquired by the Nation were occupied by Indians and Indian Tribes who in good conscience must be recognized as the original owners of the land. However, the character of that ownership differed widely from that which stringent Anglo-Saxon law would accord recognition. Most of the lands acquired by the United States west of the Mississippi River are arid and semiarid. Agriculture, at the time of acquisition and now, could be successful only through irrigation. Earliest history describes the use of water by the Indians. No single resource was more important to the Indians of the southwest in particular, and western Indians in general. It was, in fact, an ingredient without which life could not prevail. However, it was a great deal more than that.

When an indigenous people called the Hohokams occupied the lands in the Gila and Salt River Valleys over two thousand years ago, they diverted water by means of canals which even now are recognized as highly refined engineering accomplishments. They long ago demonstrated that water applied to the land was essential if communities were to be maintained and have more than a rudimentary culture. They demonstrated the need for economic development which they undertook as a means of survival.[6]

Arizona's former Senator Hayden devoted much time to the history of the Pima and Maricopa Indians.[7] In great detail he chronicles the use of Gila River water by the Pima and Maricopa Indians. The first description of the Indian diversion and use of water in modern times, he reports, came from Father Kino, a Jesuit Missionary who visited the Pimas in 1687. The Missionary refers to the "very great aqueduct" constructed by the Indians to conduct Gila River water across great distances to irrigate large acreages of their river bottom lands.

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[6] *National Geographic Magazine*, May 1967, Vol. 131, No. 5, pp. 670 et seq.

[7] *A History of the Pima Indians and the San Carlos Irrigation Project*, 89th Congress, 1st Session; Document No. 11, first printed in 1924 reprinted in 1965.

The Pima and Maricopa Indians in Arizona had been a flourishing community of great magnitude. The Spaniards described it as it existed near the end of the seventeenth century and marveled at the Indian economic development. They observed the adjustment made by the Indians to a desert environment which, without water, produced a most meager subsistence. A half-century later another Spanish Missionary was to report the Pima and Maricopa communities still undisturbed by non-Indian intrusion. He described results of their use of Gila River water: [8] "All these settlements on both banks of the river and on its islands have much green land. The Indians sow corn, beans, pumpkins, watermelons, cotton from which they make garments, * * *." Wheat was also raised, according to the report.

A hundred years later the industrious Pimas and Maricopas continued to amaze soldiers, travelers, trappers, and explorers with their agricultural practices, their use of water, and the produce that supplied not only Indians but many others taking the southern route west. A short half century was to elapse before the seizure of Indian land and water was well under way, and in another twenty-five years the wanton divestiture of the Indian land and water was far advanced.

Like the Arizona Indians, the Pueblos of the Rio Grande Valley adjusted to a desert environment by using water to promote agricultural development.

Mohaves, Yumas, and Chemehuevis likewise adapted their lives to the surrounding desert by occupying the lands on both sides of the Colorado River. In the "Great Colorado Valley," as early explorers referred to it, the Spanish soldiers and Missionaries first encountered these Indians. Later, Lieutenant Ives in his 1858 explorations on the Colorado River reported the Quechan Indians using water to raise their crops. Of the Mohaves, Ives said: "It is somewhat remarkable that these Indians should thrive so well upon the diet to which they are compelled to adhere. There is no game in the valley. The fish are scarce and of inferior quality. They subsist almost exclusively upon beans and corn, with occasional water-melons and pumpkins, and are probably as fine a race, physically, as there is in existence." [9] Those Mohave crops were raised by Indians who planted the lush river bottoms as soon as the perennial overflow had receded, thus using the natural irrigation furnished by the Colorado River.

Importance of the rivers to the indigenous cultures in western United States is not limited to agriculture. In the vast desert areas of the present State of Nevada the Northern Paiutes long prior to Fremont's discovery of Pyramid Lake in 1844 depended upon fish taken from the lake and the Truckee River as a primary source of sustenance.[10] Fisheries to the Indians of the Northwest "were not much less necessary to the existence of the Indians than the atmosphere they breathed." [11] Salmon and other fish taken from the Columbia River were always an important item of trade among the Indians as reported by Lewis and Clark.[12]

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[8] Ibid. *A History of the Pima Indians* * * *, p. 9.

[9] *Mohave Tribe of Indians* * * * v. *United States of America*, 7 Ind. Cl. Comm. 219, Finding 12(a), and sources relied upon.

[10] *Popular Science Monthly*, Vol. 58, 1900–1901, pp. 505–514.

It is significant when transition from their traditional way of life was forced upon the Western Indians, they relied upon their streams and rivers as a source of sustenance. The Yakimas, in their transition from a nation given largely to hunting and fishing, were the first in the State of Washington to undertake to irrigate their meager gardens. That change came about under the direction of missionaries who attempted to assist in the economic development of the lands to which the Yakimas were restricted.[13]

And, of course, rivers were not only the source of sustenance for the American Indians; they were the arteries of crude commerce and travel.

It is upon that background that the legal characteristics of Indian rights to the use of water will be discussed. From that background it should be clear that water was and is as necessary a part of Indian life as the land which they occupied.

IV. LEGAL ASPECTS OF INDIAN RIGHTS TO THE USE OF WATER

American Indians probably did not give thought to the nature of the right to divert and to use water or the right of fishery. Indeed, the concept of title to land and the bundle of rights which constitute it was wholly foreign to them. Under those circumstances it is not surprising that the history of the transactions between the United States Government and the Indians is infamous, often involving outright swindling of Indians out of properties of immense value. In entering into treaties and agreements, whatever means were used, the Indians were totally innocent of the principles of conveyancing the formulation of written conventions. As a consequence they had little knowledge, if any, of the terms under the law which would be required to protect their interests. From an examination of the complex documents which they were required to execute, it is manifest that the Indians did not and could not know the legal implications flowing from those treaties and agreements.

(a) *Indian Winters Doctrine Rights to the use of water:*

The *Winters Doctrine* as enunciated by the courts is based upon the law, equity, history and good conscience. Factually the decision giving rise to that doctrine is very simple.

The Fort Belknap Indian Reservation in the State of Montana is the meager residue of a vast area once guaranteed to the Indians by the 1855 Treaty with the Blackfeet.[14] In 1874 the original area established by the Treaty was sharply constricted.[15] By an agreement in 1888 the Indians were limited to a small semiarid acreage which could be made habitable only by means of irrigation. The north boundary of the Reservation was the center of the Milk River, a tributary of the Missouri.

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[11] *United States* v. *Winans*, 198 U.S. 371, 381 (1904).

[12] See *Journals of Lewis and Clark*, Bernard DeVoto, pp. 259 et seq.

[13] "* * * Ahtanum [Creek] was the cradle and proving ground of irrigation in the State of Washington * * *." *Yakima Valley Catholic Centennial*, the Beginning of Irrigation in the State of Washington.

[14] 11 Stat. 657.

[15] For a full factual and procedural review refer to *Winters* v. *United States*, 143 Fed. 740, 741 (CA9, 1906); *Winters* v. *United States*, 148 Fed. 684 (CA9, 1906).

In 1889 water was diverted from the Milk River to irrigate lands within the Fort Belknap Reservation. Upstream from the Indian diversion Winters and other defendants, non-Indians, constructed dams, diversion works, and other structures which prevented the waters of the Milk River from flowing down to the Indian irrigation project. An action to restrain the Winters diversion was initiated in the federal district court, and an injunction ensued. From that injunction Winters appealed. In sustaining the injunction, the Court of Appeals for the Ninth Circuit declared:

> "In conclusion, we are of opinion that the court below did not err in holding that, "when the Indians made the treaty granting rights to the United States, they reserved the right to use the waters of Milk River" at least to the extent reasonably necessary to irrigate their lands. The right so reserved continues to exist against the United States and its grantees, as well as against the state and its grantees." [16]

Thus it was the Indians granting to the United States; it was the Indians reserving to themselves that which was not granted—the rights to the use of water of the Milk River to the extent required for their properties.

The concept that the Indians granted title to the United States, and not the converse, is important in regard to the nature of the title of the Indians. It is reflective of the rationale of the *Winans Decision* rendered by the Supreme Court two years earlier. There the Court had before it the fishery provisions of the Treaty of June 9, 1855, between the United States and the Confederated Tribes of Yakima Indians.[17] By that document the Indians retained the "exclusive right of taking fish in all the streams where running through or bordering" their Reservation; "also the right of taking fish at all usual and accustomed places" on and off the Reservation. Patents were issued by the United States to lands along the Columbia River from which the Yakimas had traditionally fished. Those patents did not include any reference to the Indian Treaty fishing rights and the owners of the land denied that the lands thus patented were subject to those rights of fishery. Moreover, the State of Washington had issued to the owners of the land licenses to operate fishing wheels which, it was asserted, "necessitates the exclusive possession of the space occupied by the wheels." [18]

Rejecting the contentions of the land owners that the Yakima fishing rights in the Columbia River had been abrogated by the issuance of the patents, the Court declared:

> "The right to resort to the fishing places in controversy was a part of larger rights possessed by the Indians * * * which were not much less necessary to the existence of the Indians than the atmosphere they breathed. New conditions came into existence, to which those rights had to be accommodated. Only a limitation of them, however, was necessary and intended, not a taking away."

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[16] *Winters* v. *United States*, 143 Fed. 740, 749 (CA9, 1906).

[17] *United States* v. *Winans*, 198 U.S. 371 (1904).

[18] *Id.* at 380 (1904).

Having thus appraised the Yakima Treaty, the Court then pronounced the crux of the decision:

> "* * * the treaty was not a grant of rights to the Indians, but a grant of rights from them [to the United States] a reservation of those not granted." [19]

The Court further observed that: "the right [of fishing] was intended to be continuing against the United States and its grantees as well as against the State and its grantees." [20]

Thus, the nature of the title of the Indians under the Treaties between them and the United States was cast in the correct light. Indian title does not stem from a *conveyance to them*. Rather, the title which resides in them to their lands, their rights to the use of water, their rights of fishery, their timber—all interests in real property and natural resources were *retained by them* when they granted away title to vast areas which had been theirs.

Those pronouncements by the Supreme Court declared in advance of the *Winters Decision* are fundamental precepts of the law, recognizing that rights of fishery are interests in real property subject to protection under the Constitution.[21]

Yet today, as they have for generations past, the Yakimas still struggle to maintain their rights of fishery. They are also seeking to revive salmon runs destroyed by power and other developments on the Columbia River.

On appeal, the *Winters* case presented two basic problems to the Supreme Court for resolution: (1) Were rights to the use of water in the Milk River reserved for the Fort Belknap Indian land, though no mention of those rights is contained in the Treaty of October 17, 1855, the Act of 1874, or the Agreement of 1888; (2) assuming those rights were reserved for the Indian lands, was there a divestiture of them upon the admission of Montana into the Union? [22]

In rendering its keystone opinion the Supreme Court analyzed with care the relationship between the United States and the Indians, together with the objectives of the Agreement of 1888, in which the Indians ceded away a vast tract of land, retaining for themselves only a vestige of that which they formerly occupied. The Court then addressed itself to the untenable position of the non-Indians:

> "The lands [retained by the Indians] were arid and, without irrigation, were practically valueless. And yet, it is contended,

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[19] *Ibid.* p. 381 (1904).

[20] *Ibid.* 381–382.

[21] In considering the legal aspects of the property interests of the American Indians in the rivers, streams and lakes, it is emphasized that of necessity there has been applied principles of law which differ radically from the Indians' aboriginal view in regard to natural resources. Apparently title to the right of fishery as this Nation's jurisprudence developed had no place in the Indians' concept of taking fish from the streams where and when they could. At a very early date in the evolution of Anglo-Saxon law the right of fishery—akin to rights to the use of water as that law was much later to evolve—was a right in real property, a part and parcel of the land abutting upon or traversed by a stream or lake.

In Thompson on Real Property, per. ed., vol. 1, sec. 250, this statement appears: "It is held that fishing rights are incorporeal hereditaments, since they issue out of, * * * or are annexed to things corporeal."

It is also stated in 22 Am. Jur., Fish and Fisheries, sec. 7: "The right to fish at a certain place is a property right constitutionally protected from confiscatory legislation, * * *. It is an interest in real estate in the nature of an incorporeal hereditament, * * *."

The nature of the right of fishery is recognized in California Code, Civil, sec. 801, which is in part: "The following land burdens, or servitudes upon land, may be attached to other land as incidents or appurtenances, and are then called easements: * * * (2) The right of fishing; * * *." That principle was likewise recognized by the Supreme Court of the State of Oregon in the case of *Hume* v. *Rogue River Packing Co.*, 51 Ore. 237, 92 Pac. 1065 (1907), where it is stated that the right of fishery is a right in real property and not a personal right.

[22] *Winters* v. *United States*, 207 U.S. 564, 575 et seq. (1907).

> the means of irrigation were deliberately given up by the Indians and deliberately accepted by the Government. * * * The Indians had command of the lands and the waters—command of all their beneficial use, whether kept for hunting, "and grazing roving herds of stock," or turned to agriculture and the arts of civilization. Did they give up all this? Did they reduce the area of their occupation and give up the waters which made it valuable or adequate?"

Answering the question which it had propounded, the Court declared:

> "If it were possible to believe affirmative answers, we might also believe that the Indians were awed by the power of the Government or deceived by its negotiators. Neither view is possible. The Government is asserting the rights of the Indians."[23]

The Court reiterated the basic tenents of the *Winans* case—that the Indians, not the United States, were the grantors. Cogently the Court inquired: Did the Indians grant and the United States accept all of the Indian rights to the use of water without which the lands were uninhabitable? It rejected that proposition out of hand as being without merit. Likewise significant was the Court's observation that as the owners of the land and waters the Indians could use them for hunting, grazing, or, in the words of the Court, for "agriculture and the arts of civilization." The Court found no words of limitation upon the uses to which the Indians could apply their water rights.

Turning to the part-legal, part-political question—of Montana's jurisdiction over the Indian rights to the use of water, the Supreme Court had this to say:

> "The power of the Government to reserve the waters and exempt them from appropriation under the state laws is not denied, and could not be. *The United States* v. *The Rio Grande Ditch & Irrigation Co.*, 174 U.S. 690, 702; *United States* v. *Winans*, 198 U.S. 371. That the Government did reserve them we have decided, and for a use which would be necessarily continued through years. This was done May 1, 1888, and it would be extreme to believe that within a year Congress destroyed the reservation and took from the Indians the consideration of their *grant, leaving them a barren waste*—took from them the means of continuing their old habits, yet did not leave them the power to change to new ones."[24]

The crucial aspect of the character of the Indian title is thus clear: (1) By the Agreement of 1888 the Indians reserved to themselves the rights to the use of water in the Milk River although that Agreement made no mention of rights of that nature; (2) the Indian rights thus reserved were not open to appropriation under the laws of the State of Montana upon its admission into the Union, but rather were exempt from the operation of those laws. The full import of the *Winters* and *Winans* decisions are central to the discussion that follows.

(b) *Winters Doctrine Rights are part and parcel of the land itself—interests in real property:*

The decisions rendered by the Court of Appeals for the Ninth Circuit and the Supreme Court are based on the concept of a grant

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[23] Ibid., 207 U.S. 564, 576 (1907).
[24] *Ibid.*, 207 U.S. 564, 577 (1907).

from the Indians *to* the national government. They chronicle the successive transactions pursuant to which Indian domains, once embracing large segments of the present State of Montana, were diminished to a small area made habitable only by the availability of water.

The Yakimas' rights of fishery under their Treaty of 1855 are, under the *Winans* holding, interests in real property—part and parcel of the land itself. In the *Ahtanum* cases,[25] the Court of Appeals, considering that Treaty, applied the same principles to the water rights in Ahtanum Creek which the northern boundary of the Yakima Reservation.

In the first *Ahtanum* decision, the Court of Appeals discussed the nature and characteristics of the Indian *Winters Doctrine Rights* in the following terms:

> "That the Treaty of 1855 reserved rights in and to the waters of this stream for the Indians, is plain from the decision in *Winters* * * *. In the Winters case, as here, the reservation was created by treaty; the reserved lands were a part of a much larger tract which the Indians had the right to occupy; and the lands were arid and without irrigation practically valueless. * * * This court, in its decision (143 F. 740, 746), which the Supreme Court was affirming, had said: "We are of opinion that it was the intention of the treaty to reserve sufficient waters of Milk River, as was said by the court below, 'to insure to the Indians the means wherewith to irrigate their farms', and that it was so understood by the respective parties to the treaty at the time it was signed." [26]

Continuing to define and declare the extent of the *Winters Doctrine Rights*, the court states:

> "* * * [i]t must be borne in mind, as the Supreme Court said of this very treaty, that 'the treaty was not a grant of rights to the Indians, but a grant of rights from them—a reservation of those not granted.' United States v. Winans, 198 U.S. 371, 381. Before the treaty the Indians had the right to the use not only of Ahtanum Creek but of all other streams in a vast area. The Indians did not surrender any part of their right to the use of Ahtanum Creek regardless of whether the Creek became the boundary or whether it flowed entirely within the reservation." [27]

Having reviewed in detail the manner in which the Yakimas had reserved their *Winters Doctrine Rights*, the court applied to them the principles governing interests in realty:

> "This is a suit brought by the United States as trustee for the Yakima tribe of Indians to establish and quiet title to the Indians' right to the use of the waters of Ahtanum creek in the State of Washington, * * *." [28]

With further reference to the nature of the rights and the action brought to have them determined, the Court states:

> "The suit [to protect the Yakima rights], like other proceedings designed to procure an adjudication of water rights, was in its purpose and effect one to quiet title to realty." [29]

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[25] See footnote 5 above.

[26] *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321, 325 (CA9, 1956).

[27] Ibid., 236 F. 2d 321, 326.

[28] Ibid., 236 F. 2d 321, 323.

[29] *Ibid.*, 236 F. 2d 321, 339.

Those rulings in regard to the characteristics of the *Winters Doctrine Rights* to the use of water as being interests in real property, comport fully with the *Powers Decision* rendered by the Supreme Court respecting the *Winters Doctrine Rights* of the Crow Indians.[30] There are several aspects of the *Powers Decision* that are of importance to the Indians in addition to it being a precedent respecting the nature of the *Winters Doctrine Rights*. The decision arose from an attempt to enjoin the use of water by a non-Indian, who had succeeded to the title to land from an Indian allottee. The Court upheld the lower court's refusal to grant the injunction, specifically declaring—in keeping with sound principles of real estate conveyancing—that the non-Indian succeeded to "some portion of tribal waters," adding this most important caveat when consideration is given to the implications of the *Powers Decision:*

> "We *do not* consider the extent or precise nature of respondents' [non-Indian] rights in the water. The present proceeding [being an action to enjoin, not, as in *Ahtanum,* to quiet title] is not properly framed to that end." [31]

It is elemental that rights to the use of water are interests in real property.[32] Likewise elemental is the principle that a right to the use of water is usufructuary and does not relate to the corpus of the water itself.[33] Those principles are, of course, applicable to the *Winters Doctrine Rights.*

As interests in real property *Winters Doctrine Rights* are entitled to be protected, and the obligation to protect them against abridgement and loss is identical with the obligations respecting the land itself. This concept goes far towards the elimination of the confusion which has on occasion arisen respecting the course which must be pursued in the exercise and protection of them.

(c) *The measure of Indian rights to the use of water for the present and future economic development of their Reservations:*

The success of any program in furtherance of development in the western United States is, of necessity, predicated not only upon a *present* firm supply of water but likewise upon a firm supply in the *future*. In the application of the *Winters Doctrine* the courts recognized that the Indians would of necessity need additional quantities of water to meet their future needs:

> "What amount of water will be required for these purposes may not be determined with absolute accuracy at this time; but the policy of the Government to reserve whatever water of Birch Creek may be reasonably necessary, not only for present uses, but for future requirements, is clearly within the terms of the treaties as construed by the Supreme Court in the Winters Case." [34]

In keeping with the declaration that the Indians had rights in the stream to meet their present and future needs, the Court of Appeals approved the means provided in the decree entered by the lower court in these terms:

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[30] *United States* v. *Powers*, 305 U.S. 527, 533 (1939).

[31] *Ibid.*, 305 U.S. 527, 533 (1939).

[32] Wiel, *Water Rights in the Western States*, 3d ed., vol. 1, sec. 18, pp. 20, 21; sec. 283, pp. 298–300; sec. 285, p. 301. *United States* v. *Chandler-Dunbar Water Power Co.*, 229 U.S. 53, 73 (1913). *Ashwander* v. *TVA*, 297 U.S. 288, 330 (1936).

[33] *Fuller* v. *Swan River Placer Mining Co.*, 12 Colo. 12, 17; 19 Pac. 836 (1898). *Wright* v. *Best*, 19 Cal. 2d 368; 121 P. 2d 702 (1942). *Sowards* v. *Meagher*, 37 Utah 212; 108 Pac. 1112 (1910). See also *Lindsey* v. *McClure*, 136 F. 2d 65, 70 (C.A. 10, 1943).

[34] *Conrad Investment Company* v. *United States*, 161 Fed. 829 (CA9, 1908).

> "It is further objected that the decree of the Circuit Court provides that, whenever the needs and requirements of the complainant for the use of the waters of Birch creek for irrigating and other useful purposes upon the reservation exceed the amount of water reserved by the decree for that purpose, the complainant may apply to the court for a modification of the decree. This is entirely in accord with complainant's rights as adjudged by the decree. Having determined that the Indians on the reservation have a paramount right to the waters of Birch Creek, it follows that the permission given to the defendant to have the excess over the amount of water specified in the decree should be subject to modification, should the conditions on the reservation at any time require such modification." [35]

The same principle was declared by the Supreme Court in *Arizona* v. *California*.[36] There the Court, relying upon the *Winters* decision, stated that the quantities of water reserved for the Indians were sufficient "to make those reservations livable." [37] In sustaining the Report of the Special Master, the Court said:

> "* * * We also agree with the Master's conclusion as to the quantity of water intended to be reserved. He found that the water was intended to satisfy the future as well as the present needs of the Indian Reservations and ruled that enough water was reserved to irrigate all the practicably irrigable acreage on the reservations." [38]

It is important that the Supreme Court not only declared that the *Winters Doctrine* comprehends water for future needs to make "livable" the Reservations then under consideration which it described as being comprised of "hot, scorching sands", but also accepted those criteria as a means—though in no sense the exclusive means—of measuring the rights to the use of water which were in fact reserved: "We have concluded * * * that the only feasible way by which reserved water for the reservations can be measured is irrigable acreage." [39]

When the United States petitioned to intervene in *Arizona v. California*—thus eliminating the objection to jurisdiction for want of indispensable parties—the irrigable acreage criterion was tendered to the Court as the best measure of rights claimed for the particular Reservations involved.

The Supreme Court also adopted a different criterion from that used in connection with the Indian Reservations. It stated:

> "* * * the United States intended to reserve water sufficient for the future requirements of the Lake Mead National Recreation Area, the Havasu Lake National Wildlife Refuge, the Imperial National Wildlife Refuge and the Gila National Forest." [40]

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[35] *Conrad Investment Company* v. *United States*, 161 Fed. 829, 835 (CA9, 1908);

[36] 373 U.S. 546 (1962).

[37] Ibid., 373 U.S. 546, 599.

[38] *Arizona* v. *California*, United States Intervener, 373 U.S. 546, 600 (1962).

[39] Ibid., 373 U.S. 546, 601.

[40] Ibid., 373 U.S. 546, 601 (1962).

There are numerous Reservations, all of which according to the Supreme Court must be "livable" by the Indians who reside on them. These Reservations vary from those situated on Puget Sound to those in the desert areas of southwestern United States. The quantities of water required in the humid regions differ widely from the "hot, scorching sands" to which the Court made reference. Similarly the water requirements will differ dependent upon the use to which the waters are to be applied in the economic development of each Reservation.

(d) *Indian Winters Doctrine Rights, like the lands of which they are a part, may be used for any beneficial purpose:*

Potential for economic development of the Indian Reservations is inextricably related to the legal title to the right to divert and use water. Those Reservations were established in perpetuity as a "home and abiding place" for the Indians. In the words of the Supreme Court, "It can be said without overstatement that when the Indians were put on these reservations they were not considered to be located in the most desirable area of the Nation." [41] Most of them were established during times when this Nation was experiencing great changes economically and socially. Changes were anticipated and changes came about and the process of change continues. From a predominantly rural culture geared to the cultivation of the soil, this nation has developed into an urban and industrial country.

Changes have likewise come about concerning the American Indians' occupation of Reservations which were established by treaty and agreement between the Indians and the national government. Reservations were likewise established unilaterally by Executive Orders and congressional enactments. At the time of their establishment those Reservations were primarily suitable for farming and livestock raising. Coinciding with the shift of our national economy, the Reservations have changed. Some, including the Pueblos of New Mexico and the Salt River Indian Reservation in Arizona, are close to and are rapidly becoming a part of urban areas.

Concomitant with the changes in land uses are changes in water uses. With prescience the Supreme Court in *Winters*, in 1907, stated:

> "The Indians had command of the lands and the waters—command of all their beneficial use, whether kept for hunting, 'and grazing roving herds of stock,' or turned to agriculture and the arts of civilization." [42]

That conclusion is the key to economic development on the Reservations. Having retained the title to lands, they retained all incidents of that title, including but not limited to rights to the use of water. Title to those rights were free of limitations on the purposes to which they could be applied. In *Conrad Investment Company*, the court referred to the fact there was vested in the Indians the rights to use the streams to meet future developments "for irrigating and other useful purposes."

In the second *Ahtanum* decision the court reviewed the main precepts of the *Winters Doctrine* in these terms:

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[41] Ibid., 373 U.S. 546, 598.
[42] *Winters* v. *United States*, 207 U.S. 564, 576 (1907).

> "This court held that by reason of the rule laid down in Winters * * * and other decisions of this court applying the rule of the Winters case, including Conrad Inv. Co. * * *
>
> > *All of the waters of Ahtanum Creek*, or so much thereof as could be *beneficially used* on the Indian Reservation were, by virtue of the treaty, reserved for use by the Indian tribe upon their lands." [43] (Emphasis supplied)

Adopting a practice seldom pursued, the Court of Appeals formulated the decree and directed its entry, which, based upon the facts, adjudged that "after the tenth day of July in each year, [the date when water becomes in short supply] *all* the waters of Ahtanum Creek shall be available to, and subject to diversion by, the plaintiff [United States of America] for use on Indian Reservation lands south of Ahtanum Creek, *to the extent that the said water can be put to a beneficial use*." [44] (Emphasis supplied.)

Pertinency must be attributed to the fact that in *Arizona* v. *California*, as reviewed above—rights were declared to have been reserved for the widely disparate present and "future requirements" of a National (1) recreation area; (2) wild life refuge; and (3) national forest.

Economic development of Indian Reservations, as stated above, must be geared to land and water use. Hence the authority to decide the uses becomes important. It is, of course, an elemental proposition of constitutional law that there resides with the Congress of the United States, pursuant to the Commerce Clause, the plenary power and authority to conduct Indian affairs.[45] At a relatively early date in the nation's history the Supreme Court observed that "This power must be considered as exclusively vested in Congress * * *." [46] A concomitant Constitutional proviso—that "The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States" must also be considered.[47] It is equally applicable to the Indian lands and rights to the use of water [48] as it is to lands the government holds for the benefit of the people as a whole.

It is pertinent at this juncture to set forth this caveat:

> Although the constitution is the source of authority for the administration of Indian lands and water rights, these property interests are private, not public in nature. The precepts of the law which govern their administration are thus vastly different from those which govern "public" lands administered by various other agencies of the federal government.

(e) *Application of the Winters Doctrine to Treaty, Executive Order and Congressional Act Reservations*

In the *Walker River* case [49] the federal court had before it Indian claims to the use of water, Neither a treaty nor an agreement between the government and the Indians was involved, for the Walker River Indian Reservation had been created in 1859 by departmental action subsequently approved by an Executive Order.

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[43] *United States* v. *Ahtanum Irrigation District*, 330 F. 2d 897, 899 (CA9, 1964).

[44] Ibid., 330 F. 2d 897, 15 (CA9, 1964).

[45] Constitution he United States, 1787, Article I, Sec. 8, Cl. 3: "Section 8: The Congress shall have Power: "To regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes; * * *."

[46] *Worcester* v. *Georgia*, 31 U.S. 515, 559; 580-581 (1832).

[47] Constitution of the United States, 1787, Article IV, Section 3, Cl. 2.

[48] *Arizona* v. *California*, 373 U.S. 546, 597-598 (1962).

[49] *United States* v. *Walker River Irr. Dist.* 104 F.2d 334, 336 (CA9, 1939).

In *Walker River* the court alluded to the fact that in *Winters* the Treaty was emphasized.[50] That the Indians had not retained any rights to the use of water in the Walker River did not alter the court's decision. Rather it declared: "The power of the Government to reserve the waters to the Indians and thus exempt them from subsequent appropriation by others is beyond debate." [51] In rejecting the alleged difficulties the non-Indian claimants would experience if the rights of the Indians were recognized, the court states: "The settlers who took up lands in the valleys of the stream were not justified in closing their eyes to the obvious necessities of the Indians already occupying the reservation below." Thus the decree in favor of the Indians by the court below was sustained.

Adhering to the same principles of the powers of the National Government to reserve rights to the use of water for the Indians, as reviewed above, the Supreme Court declared:

> "They [cases relating to the ownership of beds of navigable streams] do not determine the problem before us and cannot be accepted as limiting the broad powers of the United States to regulate navigable waters under the Commerce Clause and to regulate government lands under Art. IV, Sec. 3 of the Constitution. We have no doubt about the power of the United States under the clauses to reserve water rights for its reservations and its properties." [52]

From the legal standpoint there is a substantial difference between the rights, title to which resided in the Indians and which they retained by Treaty or agreement, from those, title to which was in the United States, but passed to the Indians when their Reservations were created by Congress or Executive Order. Indian rights to the use of water under Treaties are immemorial in character having always resided in the Indians. Where Congress or the Executive granted title to the Indians those titles are from the United States subject to any interests outstanding when title was conveyed to the Indians. That difference—immemorial Indian title or invested Indian title—does not, it is believed, have bearing upon the economic development of the Reservations.

From the standpoint of this consideration—the need for rights to the use of water if the Indian Reservations are to have economic growth and establish a viable community—the question of immemorial title retained by the Indians or title vested by the United States in the Indians, is not of too great importance. Comment is warranted, however, as to the capricious course of conduct which was adhered to in connection with the dealings with the Indians. It is, of course, manifest that the immemorial title is of greater value than the invested title from the United States because the latter title could be subject to other outstanding interests which is not true in regard to the treaty rights. An example of that capriciousness has had far-reaching effect upon the rights and interests of the Mohaves and the

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[50] Ibid., 104 F.2d 334, 336.
[51] Ibid., 104 F.2d 334, 336.
[52] *Arizona* v .*California*, 373 U.S. 546, 598 (1962).

Colorado River Tribes of the Colorado River Indian Reservation.[53] Colonel Poston, in 1865 a Member of Congress but formerly a Superintendent of Indian Affairs for the Arizona Territory, presented a graphic description of the course which was adopted in regard to the previously proud and self-sufficient Yumas, Mohaves, and other Colorado River Indians. Quite obviously he gave no thought to the legal implications flowing from his patronizing attitude towards those Indians, however benign his approach to them may have been. Those Indians had been reduced to begging for food by reason of the fact, in the words of Colonel Poston, that they had "been robbed of their lands and their means of subsistence * * *." [54] He recited that as a representative of the United States "* * * I did not undertake to make a written treaty" with them because "* * * I considered that the Government was able and willing to treat them fairly and honestly * * *." In their dire distress he pointed out that the Yumas, Mohaves and other Indians "there assembled were willing, for a small amount of beef and flour, to have signed any treaty which it had been my pleasure to write." Because he would attempt to obtain from a "magnanimous Government some relief from their desperate circumstances," he asked those Indians to abandon "* * * all the one hundred and twenty thousand square miles, full of mines and rich enough to pay the public debt of the United States" and to "confine themselves to the elbow of the Colorado River, not more than seventy-five thousand acres." That action resulted in the extinguishment of the Mohave title with the attendant loss of invaluable lands and rights to the use of water and an ensuing history of contradictions, discriminations and travail.

(f) *Indian Winters Doctrine Rights as distinguished from riparian rights*

Economic development on the Indian Reservations has been keyed throughout this consideration to *Winters Doctrine* rights to the use of water. The location of Indian Reservations and competition to meet present and future requirements necessitates reference to the individual, corporation, municipal, and quasi-municipal rights under the doctrine of prior appropriation. *Winters Doctrine* rights have been referred to as immemorial in character, prior and paramount, or in similar terms, according to the Indians preferential status on streams. Indian rights, having been retained by the Indians or invested in them antecedent to settlement of the lands in the Western United States, demonstrate the coalescence of history and the law. Those water rights were never opened by the Congress to private acquisition.

(I) *The doctrine of prior appropriation:*

Title to most of the Western United States—land, water rights, minerals, timber and all natural resources originally resided in the national government. Miners came to the harsh environment of the West exploring for precious minerals. Then, as now, water was the key to economic development. Without it gold remained in the granite and in the gravel. As a consequence, water was diverted out of the streams to the mine locations, frequently long distances at great costs of money, time and effort. The mining and water diversion were accomplished with the knowledge and acquiescence of the Government of the United States.

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[53] See 7 *Ind. Cl. Comm. Finding* 25(a) et seq., how the Mohaves, Yumas and others were deprived of the benefits of treaties, is as follows:

"25. (a) No treaty was ever made between the United States and the Mohave Tribe for the purpose of extinguishing the Indian title in said tribe to the lands it exclusively used and occupied. The lands found herein to have been exclusively used and occupied by the Mohave were located in what are now the States of California, Nevada and Arizona."

[54] *Cong. Globe*, 38th Congress, 2d Sess., March 2, 1865, p. 1320.

Violence is very much a part of the history of water law in the West. As law and order came to the Old West, there grew up in the mining districts the precept that the "First in time" was "first in right" on the streams of the public domain.

In 1866 the Congress, considering the nation's western lands, took cognizance of the laws of the mining States, which by that time had come into the Union, and declared:

> "Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; * * *." [55]

In 1870 there was further Congressional recognition of the rights to the use of water exercised pursuant to State law by enactment of the following language:

> "All patents granted, or preemption or homesteads allowed, shall be subject to any vested and accrued water rights, or rights to ditches and reservoirs used in connection with such water rights, as may have been acquired under or recognized by this section." [56]

Thus the patentee took his title from the nation subject to privately acquired rights in the streams on the "public land." [57]

In the 1877 Desert Land Act, Congress, to foster economic development of the arid public land, having provided for diversion and use of water under specified conditions, declared that:

> "* * * all surplus water over and above such actual appropriation and use, together with the water of all lakes, rivers, and other sources of water supply upon the public lands and not navigable, shall remain and be held free for the appropriation and use of the public for irrigation, mining, and manufacturing purposes subject to existing rights." [58]

In summarizing the legal consequences flowing from the Acts of 1866, 1870 and 1877, the Supreme Court declared:

> "As the owner of the public domain, the government possessed the power to dispose of land and water thereon together, or to dispose of them separately, (Howell v. Johnson, C.C. 89 Fed. 556, 558. The fair construction of [the Desert Land Act of 1877] is that Congress intended to establish the rule that for the future the land should be patented separately; and that all non-navigable

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[55] Act of July 26, 1866, Ch. 262, Sec. 9, 14 Stat. 253.

[56] Act of July 9, 1870, Ch. 235, Sec. 17, 16 Stat. 218.

[57] Act of July 9, 1870, Ch. 235, Sec. 17, 16 Stat. 218. *Note:* The quotations are from 43 U.S.C. 661 in which the Acts of 1866 and 1870 are in part codified. See in regard to the preceding review: *Jennison* v. *Kirk*, 98 U.S. 453 (1878); *California-Oregon Power Co.* v. *Beaver Portland Cement Co.*, 295 U.S. 142 (1935); *Federal Power Comm.* v. *Oregon*, 349 U.S. 435 (1955).

[58] Act of March 3, 1877, Ch. 107, Sec. 1, 19 Stat. 377.

waters thereon should be reserved for the use of the public under the laws of the states and territories named."[59]

When the Supreme Court declared that the National Government as owner of the public lands had the power to dispose of those lands and water rights separately—as Congress did by the Acts of 1866, 1870 and 1877—it relied upon the decision of *Howell* v. *Johnson* involving water rights acquired in a stream in Wyoming which traversed public lands.

> "The rights of plaintiff do not, therefore, rest upon the laws of Wyoming, but upon the laws of congress.
>
> "The legislative enactment of Wyoming was only a condition which brought the law of congress into force. The national government is the proprietor and owner of all the land in Wyoming and Montana which it has not sold or granted to some one competent to take and hold the same. Being the owner of these lands, it [the United States] has the power to sell or dispose of any estate therein or any part thereof. The water in an innavigable stream flowing over the public domain is a part thereof, and the national government can sell or grant the same, or the use thereof, separate from the rest of the estate, under such conditions as may seem to it proper."[60]

The doctrine of prior appropriation has been well stated in these terms:

> "* * * To appropriate water means to *take* and *divert* a specified quantity thereof and put it *to beneficial use* in accordance with the laws of the State where such water is found, and, by so doing, to acquire under such laws, a vested right to *take* and *divert* from the same source, and to use and consume the same quantity of water *annually forever, subject only to the right of prior appropriations. * * * the perfected vested right to appropriate water flowing * * * cannot be acquired without the performance of physical acts through which the water is and will in fact be diverted to beneficial use.*"[61] (Emphasis supplied.)

(II) *Indian Winters Doctrine Rights differ drastically from common law riparian rights:*

Unsuited to the semiarid regions of the west and incompatible with the monopolistic aspects of the doctrine of prior appropriation, the common law doctrine of riparian rights—a product of a more humid, less harsh environment than that of Western United States—was rejected by the States of Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. Water law is generally the outgrowth of experience, not logic, and where logic purported to override experience, as in California, Oregon and other states, who adhere to even greatly modified concepts of riparian principles together with the doctrine of prior appropriation, confusion has ensured. In a recent California proceeding the principles of the *Winters Doctrine* were applied to Indian and Federal rights to both surface and ground waters. The principles of privately owned riparian rights were applied to surface waters, principles respecting correlative privately owned rights were likewise applied to ground waters, and the principles respecting appropriative rights were applied to both surface and ground waters.[62]

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[59] *California Oregon Power Co.* v. *Beaver Portland Cement Co.*, 295 U.S. 142, 163–64 (1935).

[60] *Howell* v. *Johnson*, 89 Fed. 556, 558 (D. Mont. 1898). State court decisions appear generally in accord with this pronouncement.

Smith v. *Denniff*, 24 Mont. 20, 21; 60 Pac. 398 (1900). See also *Story* v. *Woolverton*, 31 Mont. 346, 353–54; 78 Pac. 589, 590 (1904).

Benton v. *Johncox*, 17 Wash. 277, 289; 49 Pac. 495, 499 (1897): "The government, being the sole proprietor, had the right to permit the water to be taken and diverted from its riparian lands; * * *."

LeQuime v. *Chambers*, 15 Idaho 405; 98 Pac. 415 (1908).

Lux v. *Haggin*, 69 Cal. 255, 338; 10 Pac. 674, 721 (1886): "It has never been held that the right to appropriate waters on the public lands of the United States was derived directly from the state of California as the owner of innavigable streams and their beds; and, since the act of congress granting or recognizing a property in the waters actually diverted and usefully applied on the public lands of the United States, *such rights have always been claimed to be deraigned by private persons under the act of congress, from the recognition accorded by the act, or from the acquiescence of the general government in previous appropriations made with its presumed sanction and approval.*" (Emphasis supplied).

Morgan v. *Shaw*, 47 Ore. 333, 337; 83 Pac. 534, 535 (1906).

Hough v. *Porter*, 51 Ore. 318, 391; 95 Pac. 732; 98 Pac. 1083, 1092 (1908, 1909).

2 Kinney, *Irrigation and Water Rights*, 1118 (2d ed. 1912), reiterates that proposition. From this latter source, at 692–93, this statement is taken:

"The Government is still the owner of the surplus of the waters flowing upon the public domain. * * * It therefore follows, as the result of the ownership by the United States of the waters flowing upon the public domain, that any dedication by a State of all the waters flowing within its boundaries to the State or to the public amounts to but little, in the face of any claim which may be made by the Government, *at least* to all the surplus or unused waters within such State."

[61] *Arizona* v. *California*, 283 U.S. 423 (1931).

This case suggests the difficult but imperative, immediate need of enforcing the *Winters Doctrine* rights of the American Indians if economic development on their Reservations is not to be totally stifled in areas comparable to Southern California.

A riparian right is held and exercised correlatively with all other riparian owners as "a tenancy in common and not a separate or severable estate." [63] Obviously the concept of the "reserved right" in the Indians is wholly at variance with the limitations which are present in a tenancy in common. Further, "a riparian owner has no right to any mathematical or specific amount of the waters of a stream as against other like owners." [64] That aspect of the riparian right results from the fact that those rights are held correlatively with all other riparians. As a consequence the quantity of water riparian owners may use must be "reasonable" in the light of the claims of all other riparians. Reasonableness is, of course, a variant depending upon the supply of water, the demands which differ from day to day, and a multitude of other factors.[65]

Equally at odds with the concept of *Winters Doctrine* rights is the limitation upon the exercise of rights riparian in character: " 'Land which is not within the watershed of the river is not riparian thereto, and is not entitled, as riparian land, to the use or benefit of the water from the river, although it may be part of an entire tract which does extend to the river * * *.' " [66] There is, of course, no legal basis for any limitation of *Winters Doctrine* rights to the watershed in which the Indian land is situated. Moreover, State law could not thus restrict the power of Congress over the properties of the nation.[67]

It is pertinent at this phase of the consideration to turn to the state law governing water rights of private persons and briefly to discuss the exemption of Indian water rights from those laws.

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[62] *United States* v. *Fallbrook Public Utility District*, 101 F. Supp. 298 (S.D. Cal. 1951); 108 F. Supp. 72 (1952); 109 F. Supp. 28 (1952); 110 F. Supp. 767 (1953); 202 F. 2d 942 (9th Cir. 1953); 165 F. Supp. 806 (1958); 193 F. Supp. 342 (1961); Reversed in part and affirmed in part, 347 F. 2d 48 (9th Cir. 1965). Noteworthy is the fact that on May 8, 1963, a final judgment was entered decreeing, in effect, every right and interest of Fallbrook Public Utility District subject and subordinate to the prior rights of the United States.

[63] *Seneca Consolidated Gold Mines Co.* v. *Great Western Power Co. of California*, 209 Cal. 206; 287 Pac. 93, 98 (1930).

[64] *Prather* v. *Hoberg*, 24 Cal. 2d 549; 150 P. 2d 405, 410 (1944).

[65] Hutchins, *The California Law of Water Rights* 218 (1956).

[66] Ibid., page 202.

[67] *United States* v. *San Francisco*, 310 U.S. 16 (1940).

(g) *Federal-State relationship and economic development of Indian lands:*

Judicial recognition of Indian *Winters Doctrine* rights is as broad as the Western United States and it has been applied to a vast variety of circumstances. It is of prime importance to the economic development of American Indian Reservations.[68] Equally important is the fact that the American Indian Reservations are at the headwaters of, border upon, or are traversed by the major interstate stream systems in the West. For a variety of reasons, moreover, Indian water rights have remained unexrecised to a very large extent. Sharp competition exists now—and will be accentuated with expanded economic development on the Reservations—between the vested Indian rights to the use of water and those claimed by individuals or corporations, public or private, asserted under State law

Based upon sound logic, legal precedent, and expressed language upon which the States were admitted to the Union, the states and those claiming under them may not interfere with the rights of the American Indians. In practice the converse has prevailed.

Immunity of Indian *Winters Doctrine* rights from state interference or seizure has been guaranteed in a variety of ways. The State of Washington's Enabling Act and Constitution specifically provide that: "Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States * * *." [69] Concerning identical provisions in the Montana Enabling Act and Constitution, the Court of Appeals for the Ninth Circuit has unequivocally declared that the state laws respecting the appropriation of water rights would have no application to the Flathead Indian Reservation.[70] That same court later specifically rules as follows on the subject:

> "Rights reserved by treaties such as this are not subject to appropriation under state law, nor has the state power to dispose of them." [71]

In regard to water rights for lands withdrawn by the United States, the Supreme Court has declared: "the Acts of July 26, 1866, July 9, 1870, and the Desert Land Act of 1877" opening surplus rights to the use of water to appropriation "* * * are not applicable to the reserved lands and waters here involved." [72] Having thus ruled, the Supreme Court then proceeded to set forth the legal distinction between Indian lands and withdrawn lands, upon which the Pelton Project for the generation of electricity was to be located, and "public lands" to which the Desert Land Act of 1877 is applicable, by stating that the former "are not unqualifiedly subject to sale and disposition * * *." [73]

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[68] *Winters* v. *United States*, 207 U.S. 564 (1907), affirming the Court of Appeals for the Ninth Circuit, 143 Fed. 740; 148 Fed. 684. *United States* v. *Powers*, 305 U.S. 527 (1939), affirming 94 F. 2d 783. *Arizona* v. *California*, United States, Intervener, 373 U.S. 546 (1962). *United States* v. *Walker River Irrigation District, et al.*, 104 F. 2d 334 (CA9, 1939). *Conrad Investment Co.* v. *United States*, 161 Fed. 829 (CA9, 1908). *United States* v. *McIntyre*, 101 F. 2d 650 (CA9, 1939.) *Skeem* v. *United States*, 273 Fed. 93 (CA9, 1921). *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321, (CA9, 1956); Appellees' cert. denied 352 U.S. 988 (1956); 330 F. 2d 897 (1965); 338 F. 2d 307; Cert. denied 381 U.S. 924 (1965).

[69] Enabling Act, Sec. 4, second subdivision; Constitution of the State of Washington, Article XXIV, second subdivision.

[70] *United States* v. *McIntire*, 101 F. 2d 650 (CA9, 1939).

[71] *United States* v. *Ahtanum Irrigation District* 236 F. 2d 321, 328 (CA9, 1956).

[72] *Federal Power Commission* v. *Oregon*, 349 U.S. 435, 445 (1955).

[73] Ibid, 349 U.S. 435, 448.

It will be recalled that the Court in *Winters* declared emphatically that the power of the nation under the Constitution "* * * to reserve the waters and exempt them from appropriation under the state laws is not denied and could not be * * *."[74]

Title to water rights, although stemming from the Constitution itself and fully recognized by the courts, does not in any sense guarantee to the American Indians that those rights cannot be taken from them. Far from humorous is the description of State permits to appropriate rights to the use of water as "hunting licenses." A permit to appropriate, for example, in California "* * * is * * * no assurance of a water supply * * *."[75]

However, "surplus" waters in a stream frequently are diverted and used, and economies are built upon those waters quite aside from the fact that the "surplus" is actually water the rights to which reside in the Indians. Constitutional law, ethics, and good conscience become mere technicalities to be avoided or ignored under the circumstances. To the holder of the permit from the State to appropriate water rights—although it is subject to vested rights—the existence of a surplus, though it may be momentary, allows him to expend money to develop its use with the hope that time will come to his aid as a barrier to the Indians recovering the waters to which they are justly entitled. As a consequence of actual practice, as distinguished from legal niceties, the American Indians' rights to the use of water are being rapidly eroded away by those claiming under the guise of compliance with State law. They eloquently prove a Western truism about water, however harsh and cynical it may be—"use it or lose it."

ECONOMIC DEVELOPMENT OF AMERICAN INDIAN RESERVATIONS MUST BE EFFECTUATED WITHIN THE PURVIEW OF THE CONSTITUTIONAL RELATIONSHIP BETWEEN THE NATION AND THE INDIANS

(a) *American history as it relates to the American Indians and the economic development of their Reservations:*

When the European culture encountered indigenous inhabitants of the Americas it is difficult to perceive the disparity which existed between them. From the outset the then great Continental powers, though desirous of occupying the lands loosely held by the Indians, did not deny that the Indians had rights to those lands. Rather, Spain acknowledged their ownership of the lands that they occupied and refused to enslave them. The Dutch and early colonists respected the Indian rights, treating with them as the owners of their lands.[76] It is, of course, a historical fact that William Penn took cognizance of the rights of the Indians and paid them for their properties.

It is clear that the European and Indian mores did not preclude efforts to resolve amicably the differences between the invaders of the land and its occupants. The English generally entered into treaties with the Indians in the territory which they occupied. As the Supreme Court observed of Britain's historical policy with the Indians: "This was the settled state of things when the war of our revolution commenced."[77]

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[74] See supra, p. 14, footnote 15 et seq., particularly pp. 20-21 footnote 24.

[75] California's "*Rules and Regulations*" governing appropriation of rights to the use of water.

[76] *Federal Indian Law*, page 164.

[77] *Worcester* v. *Georgia*, 31 U.S. 515, 548 (1832).

History also records that the Colonies, in their rebellion against Great Britain desired most assiduously to avoid conflict with the Indians and conducted negotiations with them with that end in mind. Thus the original relationship between the former Colonies in revolt and the Indians was not that of a superior power enforcing its will upon the Indians. The basic objective was to placate a war-like people which might very well measure the difference between success and failure, victory or defeat. During the Revolutionary War the United States entered into numerous treaties with the Indians, among them being the "Articles of Agreement and Confederation with the Delaware Nation." [78] One objective of and need for the treaty was declared in the treaty itself:

> "And whereas the United States are engaged in a just and necessary war, in defence and support of life, liberty and independence, against the King of England and his adherents, * * *." [79]

Continuing, the treaty recites that the "said King" was maintaining posts and forts throughout the lands of the Delawares and the United States was in need of access across the lands of the Delaware Nation. Provision was also made in the document pursuant to which the Delawares were to assist the struggling nation in its war against Great Britain and "to join the troops of the United States aforesaid, with such a number of their best and most expeart warriors as they can spare, consistent with their own safety, and act in concert with them, * * *." [80]

In consideration of the very valuable assistance accorded to it, the United States covenanted to—

> "guarantee to the aforesaid nation of Delawares, and their heirs, all their teritoreal rights in the fullest and most ample manner, as it hath been bounded by former treaties, as long as they the said Delaware nation shall abide by, and hold fast the chain of friendship now entered into." [81]

Casting the arrangement in its proper perspective, this nation and the Indians referred to themselves in the treaty as "the contracting parties." No guardian and ward relationship there; rather a covenant for mutual assistance and recognition.

Similar treaties were entered into during the period when the Articles of Confederation were in force and effect.[82] After the adoption of the Constitution of the United States in 1787 numerous other treaties were entered into with the Indians, many of them involving lands in Western United States. A review of those treaties, many of which were contemporaneous with the adoption of the Constitution, is instructive as to the relationship between the nation and the Indians at the time and provides the correct perspective of that relationship. Frequently the arrangement between the United States and the Indians was denominated "A Treaty of Peace and Friendship" as with the "Creek Nation." [83]

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[78] 7 Stat. 13 e tseq.

[79] Article III.

[80] Article III.

[81] Article VI.

[82] Schmeckebier, The Office of Indian Affairs—U.S. Government Service Monograph No. 48; page 14: Fort Stanwix, with the Six Nations (7 Stat. L., 15) Fort McIntosh, with the Delawares, Wyandots, Chippewas, and Ottawas (7 Stat. L., 16); Hopewell, with the Cherokees (7 Stat. L., 18); Hopewell, with the Choctaws (7 Stat. L., 21); Hopewell, with the Chickasaws (7 Stat. L., 24); Mouth of the Great Miami, with the Shawnees (7 Stat. L., 26); Fort Harmar, with the Wyandots. Delawares, Ottawas, Chippewas, Potawatomi, Sauk, and Six Nations (7 Stat. L., 18, 33).

[83] 7 Stat. 35 et seq.

Violations of the treaties by the United States does not detract from the nature of the covenants when they were effectuated by the parties to them. Those violations caused consternation to President Washington during his incumbency.[84] For almost one hundred years the government and the Indian Tribes were to negotiate and attempt to resolve their differences by mutual agreements.

From those treaties, some of which are cited above, it is evident that the economic development of the United States and of the Indians were the expressed objectives. It is clear beyond question that the National policy was to create a continuing obligation to the Indians in consideration of their relinquishment of vast areas of invaluable land, water rights, forests, and other natural resources which contributed so abundantly to the affluence of the United States.

It was on that background that the Nation formulated its policy with the American Indians. Altruism undoubtedly was an ingredient giving rise to that policy. However, peace and trade with the Indians—need for domestic tranquillity—far outweighed the benign attitude toward the Indians which is frequently attributed to the Nation's founding fathers—in a word, they were practical in their efforts to survive during the formative period.

(b) *It is the Constitution which established the Nation's relationship with the Indians—the courts have interpreted it as constituting the Nation a guardian and the Indians the wards under a trust responsibility:*

Under the Articles of Confederation the provision was made that

> "The United States in Congress assembled shall also have the sole and exclusive right and power of regulating * * * the trade and managing all affairs with the Indians, not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated * * *."[85]

James Madison in the *Federalist* pointed out the anomaly created by the last quoted vague and uncertain provision, in urging the adoption of the New Constitution.[86]

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[84] Schmeckebier, *The Office of Indian Affairs—U.S. Government Service Monograph No. 48*, pages 20-21:

"Serious and earnest comments on Indian affairs appear in all of Washington's messages; some relate to aggressions of the Indians, but more are devoted to the necessity of legislation to curb the unlawful practices of the whites. In the annual address of November 6, 1792, after referring to the war in the region north of the Ohio and to Cherokee depredations on the Tennessee, the President referred to the frontier situation as follows:

"'I cannot dismiss the subject of Indian affairs without again recommending to your consideration the expediency of more adequate provision for giving energy to the laws throughout our interior frontier and for restraining the commission of outrages upon the Indians, without which all pacific plans must prove nugatory. To enable, by competent rewards, the employment of qualified and trusty persons to reside among them as agents would also contribute to the preservation of peace and good neighborhood. If in addition to these expedients an eligible plan could be devised for promoting civilization among the friendly tribes and for carrying on trade with them upon a scale equal to their wants and under regulations calculated to protect them from imposition and extortion, its influence in cementing their interest with ours could not but be considerable.'

"In the annual address of December 3, 1793, another plea was made for the regulation of trade 'conducted without fraud, without extortion, with constant and plentiful supplies, with a ready market for the commodities of the Indians and a stated price for what they give in payment and receive in exchange.'"

[85] Articles of Confederation, 1777, Article IX.

[86] *Federalist and Other Constitutional Papers*, Scott, page 236:

"The regulation of commerce with the Indian tribes, is very properly unfettered from two limitations in the Articles of Confederation, which render the provision obscure and contradictory. The power is there restrained to Indians, not members of any of the States, and is not to violate or infringe the Legislative right of any State within its own limits. What description of Indians are to be deemed members of a State, is not yet settled; and has been a question of frequent perplexity and contention in the Federal councils. And how the trade with Indians, though not members of a State, yet residing within its Legislative jurisdiction, can be regulated by an external authority without so far intruding on the internal rights of legislation, is absolutely incomprehensible. This is not the only case, in which the Articles of Confederation have inconsiderately endeavored to accomplish impossibilities; to reconcile a partial sovereignty in the Union, with complete sovereignty in the States; to subvert a mathematical axiom, by taking away a part, and letting the whole remain."

In lieu of the wholly objectionable language of the Articles of Confederation, this provision was adopted as a part of the Constitution of the United States of America: "Section 8: The Congress shall have Power: "To regulate Commerce with foreign nations, and among the several States, and with the Indian Tribes; * * *."[87] All doubts as to the plenary power of the nation in regard to its relationship with the Indians are swept away by that clause.

Also contemporaneous with that delegation by the states to the new nation of all power and authority in Indian matters, is this reflection of federal policy as enunciated in the "Ordinance of 1787: The Northwest Territorial Government":

> "* * * The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they never shall be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity shall, from time to time, be made, for preventing wrongs being done to them, and for preserving peace and friendship with them."[88]

From the shaky first steps of sovereignty the nation was to progress and to become stronger. It was no longer seeking, as it did with the Delawares, a propitious arrangement which was of mutual assistance to the "contracting" parties. Force rather than diplomacy became the method with which to transact business with the indigenous "savages". It became increasingly clear that the reciprocity between the nation and the Indians was no longer of paramount importance. Nevertheless, until relatively recent times it was propitious for the nation to come to terms with embattled Indian Tribes and in return for the lands seized from them to guarantee economic development in regard to the vestige of lands left to them.

A half century after the adoption of the Constitution Chief Justice Marshall labored greatly in an effort to analyze what he termed the "anomalous * * * character * * *," of the Nation's relationship with the Indians. He determined that an Indian Tribe was neither a state nor a foreign nation when the Cherokees sought to invoke against Georgia the Court's jurisdiction.[89] On the subject of that relationship

> "The condition of the Indians in relation to the United States is, perhaps, unlike that of any other two people in existence. In general, nations not owning a common allegiance, are foreign to each other. The term *foreign* nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else."

He then summarized as follows:

> "* * * *their relation to the United States resembles that of a ward to his guardian.*"[90] (Emphasis supplied.)

he stated:

Repeatedly the Supreme Court would express the thought:

> "The relation of the Indian tribes living within the borders of the United States, both *before* and *since* the Revolution, to the

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[87] Constitution of the United States of America, 1787, Article I, Sec. 8, Cl. 3.

[88] See Article III.

[89] *Cherokee Nation* v. *Georgia*, 30 U.S. 1, 15 (1831).

[90] Ibid., 30 U.S. 1, 17 (1831).

> people of the United States *has always* been an anomalous one and of a complex character." [91] (Emphasis supplied.)

More recently Mr. Justice Murphy, speaking for the Supreme Court, said:

> "'* * * this Court has recognized the distinctive obligation of trust incumbent upon the Government in its dealings with these dependent and sometimes exploited people.'" [92]

The Constitutional obligation here involved has also been referred to as "the generous and protective spirit which the United States properly feels towards its Indian wards." [93] In keeping with that platitude the Court has alluded to the "high standards for fair dealing required of the United States in controlling Indian affairs." [94]

Failure of the United States to fulfill its obligation as a trustee is one of the gravest difficulties in regard to the economic development of the American Indian Reservations. Through the dissipation of the remaining assets of the Indians by the failure of the nation to fulfill that obligation the hope of economic development becomes increasingly remote.

> "'From the very beginnings of this nation, the chief issue around which federal Indian policy has revolved has been, not how to assimilate the Indian nations whose lands we usurped, but how best to transfer Indian lands and resources to non-Indians.'" [95]

(c) *Standard of diligence required of the United States in administering Indian rights to the use of water in furtherance of economic development of Indian Reservations:*

Performance in the fulfillment of the nation's trust responsibility to the Indians is, of course, the crux of the matter. In this section the criteria in establishing the care, diligence and skill to be required of the nation, its agencies and personnel in protecting, preserving and administering Indian lands and rights to the use of water will be briefly reviewed.

It is basic that:

> "The trustee [guardian] is under a duty to the beneficiary [ward] in administering the trust to exercise such care and skill as a man of ordinary prudence would exercise in dealing with his own property; and if the trustee has greater skill—[here engineers, hydrologists, soil scientists, contract negotiators, administrators, lawyers]—than that of a man of ordinary prudence, he is under a duty to exercise such skill as he has." [96]

An important concomitant proposition is that, *the guardian is under a duty to the ward affirmatively "to take and keep control of the trust property."* [97] He is, moreover, to the extent of his capacities "* * * under a duty to the beneficiary to use reasonable care and skill to preserve the trust peoperty." [98] It is instructive to turn to the timber blowdown *Menominee Case* in Wisconsin. There Congress in its consent that the National Government could be sued, declared, among other things:

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[91] *United States* v. *Kagama*, 118 U.S. 381 (1886).
[92] *Seminole Nation* v. *United States*, 316 U.S. 286 (1942).
[93] *Oklahoma Tax Commission* v. *United States*, 319 U.S. 598, 607 (1943).
[94] *United States* v. *Tillamooks*, 329 U.S. 40, 47 (1946).
[95] *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321, 337 and footnote 23 (CA9, 1956).
[96] American Law Institute, *Restatement, Trusts*, Section 174.
[97] Ibid. Section 175
[98] American Law Institute

> "At the trial of said suit the court shall apply as respects the United States the same principles of law as would be applied to an ordinary fiduciary and shall settle and determine the rights thereon both legal and equitable of said Menominee Tribe against the United States notwithstanding lapse of time or statute of limitations." [99]

From the findings, conclusions and the judgment in that decision it is evident that the broad precepts of the law reviewed above were applied to the United States of America.

In a companion case, the court observed as to the performance of the trust responsibility owing by the United States to the Indians:

> "We further think that the provision of Section 3 of the jurisdictional act concerning the principles applicable to an 'ordinary fiduciary' add little to the settled doctrine that the United States, as regards its dealings with the property of the Indians, is a trustee." [100]

Moreover,

> "Where discretion is conferred upon the trustee with respect to the exercise of a power, its exercise is not subject to control by the court, except to prevent an abuse by the trustee of his discretion." [101]

From that same source are taken the criteria set forth below, which determine whether the trustee has fulfilled his obligation.[102] Full consideration of those principles goes far in establishing the nature of the nation's obligations to the Indians.

Concerning exercise of administrative discretion, one scholar wrote:

> "To the extent to which the trustee has discretion, the court will not control his exercise of it as long as he does not exceed the limits of the discretion conferred upon him. The court will not substitute its own judgment for his." [103]

It is important to observe that the courts are explicit in the manner in which the trustee must perform:

> "Even where the trustee has discretion, however, the court will not permit him to abuse the discretion. This [exercise of discretion] ordinarily means that so long as he acts not only in good faith and from proper motives, but also within the bounds of a reasonable judgment, the court will not interfere; but the court will interfere when he acts outside the bounds of a reasonable judgment." [104]

Perhaps the most basic concept of the trust obligation of the National Government to the American Indians is that it must exercise the highest degree of fidelity to them. It has been declared in regard to the loyalty of the guardian to the ward that, "The trustee is under a duty to the beneficiary to administer the trust solely in the interest of the beneficiary." [105] Recently one court declared that the United States owed "the most exacting fiduciary standards" with respect to the Indians, even if it should prefer to pursue other interests.[106] Under no circumstances can the United States in furtherance of its other obligations, act in competition with the Indians or in derogation of their rights.[107]

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[99] *The Menominee Tribe of Indians* v. *The United States*, 101 Ct. Cls. 22, 23 (1944).

[100] Ibid., 101 Ct. Cls. 10, 19 (1944).

[101] American Law Institute, *Trusts*, Section 187, page 479.

[102] "In determining the question whether the trustee is guilty of an abuse of discretion in exercising or failing to exercise a power, the following circumstances may be relevant: (1) the extent of the discretion intended to be conferred upon the trustee by the terms of the trust; (2) the purposes of the trust; (3) the nature of the power; (4) the existence or nonexistence, the definiteness or indefiniteness, of an external standard by which the reasonableness of the trustee's conduct can be judged; (5) the motives of the trustee in exercising or refraining from exercising the power, (6) the existence or nonexistence of an interest in the trustee conflicting with that of the beneficiaries." (American Law Institute, Trusts, Section 187, pp. 480–481.)

[103] III Scott on *Trusts*, 3d ed., Section 187, p. 1501.

[104] III Scott on *Trusts*, 3d ed., Section 187, p. 1501.

Freedom in the exercise of discretion is the key for the care, skill and diligence required for the proper performance by the United States, Trustee, in regard to the administration of lands and rights to the use of water for the economic development of the Indian Reservations. Sharp constriction of that freedom of discretion by reason of laws now in force gravely impairs the activities of the officials and agencies charged with the obligation of fulfilling the trust responsibilities to the Indians. That constraining influence upon the economic development of Indian Reservations is considered below.

CONFLICTING RESPONSIBILITIES UNDER THE LAW GRAVELY IMPAIR THE PRESERVATION, PROTECTION, ADJUDICATION AND ADMINISTRATION OF INDIAN LANDS AND WATER RIGHTS BY THE SECRETARY OF THE INTERIOR AND THE ATTORNEY GENERAL

(a) *Economic development of Indian lands and water rights within the purview of the Constitution:*

The trust responsibility of the United States to the Indians must be fulfilled within the purview of the Constitution. Though in theord the plenary power over Indian *Winters Doctrine* rights was delegateg to the Nation, in actuality the authority of the states or those claiming rights to the use of water under them have a very real and far-reachiny impact upon Indian rights.[108]

Inherent, though not explicitly declared in the Constitution, is the doctrine of the separation of powers among the three great branches of the Federal Government, the Executive, the Legislative and the Judicial. The checks and balances stemming from that separation of powers in the field of water resources are very real.

(i) *Congress has invested the Secretary of the Interior and the Commissioner of Indian Affairs with the power and obligation to exercise the functions of the Executive Branch of the Government in fulfilling the trust relationship of the Nation with the Indians:*

Executive power to administer the trusteeship discussed above is vested almost exclusively with the Secretary of the Interior. There resides in the Secretary of the Interior broad powers of administration, including but not limited to, the authority to issue required regulations, to direct the officers and agents of the Department in fulfillment of legal responsibilities and otherwise to carry out the will of Congress.[109] Congress has, moreover, "charged" the Secretary of the

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[105] American Law Institute, *Trusts*, Section 170.
[106] *Navajo Tribe of Indians* v. *United States*, 364 F. 2d 320, 322 (Ct. Cls. 1966).
[107] American Law Institute, *Trusts*, Section 170, p. 431 et seq.
[108] See Indian *Winters Doctrine Rights* as distinguished from riparian rights above, page 37.
[109] 5 U.S.C. 22.

Interior "with the supervision of public business relating to the following subjects: * * * 10. Indians * * *." [110] Congress has likewise provided that: "The Commissioner of Indian Affairs shall, under the direction of the Secretary of the Interior, and agreeably to such regulations as the President may prescribe, have the management of all Indian affairs and of all matters arising out of Indian relations." [111]

Sweeping nature of the powers of the Secretary of the Interior and the Commissioner of Indian Affairs is evidenced by the rules and regulations which have been promulgated, now are in force and effect.[112]

Economic development of American Indian Reservations in western United States through the exercise of Indian rights to the use of water is provided for in detail in those rules and regulations.[113] Those rights are presently exercised in connection with irrigation, fishing,[114] power development,[115] recreation, and numerous other uses.

(ii) *Congress has invested the Secretary of the Interior and the Commissioner of Reclamation with the power and authority to construct and administer reclamation projects to irrigate arid and semiarid lands in western United States, and other purposes:*

In furtherance of making habitable the arid and semiarid "public land" in western United States, the Congress in 1902 adopted the Reclamation Act.[116] Pursuant to that Act "The Secretary of the Interior is authorized to perform any and all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying out the provisions" of the Reclamation Act. Congress likewise, under that Act established the office of the Commissioner of Reclamation.[117] Numerous acts amendatory of the original Reclamation Act and supplementary to it have been passed by the Congress. For example, in 1939 the Secretary was authorized to build projects "to furnish water for municipal water supply" and other purposes, including but not limited to industrial uses.[118]

Broad authorization for the construction of projects of great magnitude has been granted to the Secretary of the Interior, including the Missouri River, Colorado River, Columbia River, and Rio Grande Basins. In each of those vast drainage areas are located numerous American Indian Reservations, the economic development of which is geared to the availability of water for agriculture, industry, recreation, and all other uses.

(iii) *Solicitor's Office: Lawyer for Bureau of Indian Affairs; Bureau of Reclamation; other Bureaus administered by the Secretary of the Interior:*

Congress has declared that: "The legal work of the Department of the Interior shall be performed under the supervision and direction of the Solicitor of the Department of the Interior, who shall be appointed by the President with the advice and consent of the Senate."[119] Associate Solicitors for the Bureau of Indian Affairs, the Bureau of Reclamation, Bureau of Land Management, and others, are under the immediate direction and responsible to the Solicitor of the Department of the Interior.

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[110] 5 U.S.C. 485.

[111] 25 U.S.C. 2; See also 25 U.S.C. 1, 1A.

[112] Title 25 Code of Federal Regulations; Indians.

[113] 25 C.F.R. 191.1 et seq.

[114] 25 C.F.R. 89.1.

[115] 25 C.F.R. 231.1 et seq.

[116] See 43 U.S.C. 371 et seq.

[117] 43 U.S.C. 373a: "General authority of the Secretary of the Interior * * *
* * * Commissioner of Reclamation; appointment.
"Under the supervision and direction of the Secretary of the Interior, the reclamation of arid lands, under the Act of June 17, 1902 and Acts amendatory thereof and supplementary thereto, shall be administered by a Commissioner of Reclamation who shall be appointed by the President"

[118] See 43 U.S.C. 485 et seq.

(b) *Congress has constituted the Attorney General as the chief law officer of the United States to protect Indian rights on the one hand and defend the U.S. against Indian claims on the other.*

The Attorney General, and more precisely, members of the Justice Department Lands Division, represent the American Indians in actions to preserve, protect, and adjudicate their rights to the use of water. Moreover, the Attorney General, through the Department's Lands Division, represents the United States against the Indians in their actions for compensation before the Indian Claims Commission,[120] and before the Court of Claims or in the United States District Courts.

(c) *Antipodal positions which Interior must take in administering streams in which Indian rights conflict with Reclamation and other projects:*

There are no major interstate stream systems—indeed, there are few tributaries of major streams—where there are not agencies in the Interior Department competing with Indians for a supply of water which is inadequate to meet all present and future demands. Because of the magnitude of its projects, the Bureau of Reclamation is the chief competitor with the Indians for that insufficient supply. Politically oriented and powerfully backed, the Bureau of Reclamation has taken and continues to take from the American Indians throughout western United States rights to the use of water for the projects which it builds. Satellite agencies of Reclamation join forces with it in this uneven struggle with the Indians.[121]

The confrontation of the agencies competing for the always short supply of water is far-reaching and gives rise to results which frequently are disastrous to the Indians. A legal impasse is created by efforts to fully support the *Winters Doctrine Rights* of the Indians as enunciated by the courts. The Bureau of Reclamation could not countenance it. To force payment to the Indians for the rights which have been seized for Reclamation Projects goes far beyond the power of the Solictor—indeed, the tenuous basis of project financial feasibility might well collapse. It is in a milieu of contradictions in law, policies, and administration that the Solicitor and his staff undertake to represent the American Indians. In their struggle to protect the last vestige of their heritage in the streams of western United States, the American Indians are confronted with a coalescence of forces far beyond the control of those who are charged with the legal responsibilities for protecting their interests. It is not an overstatement to declare that the Solicitor's representative are frequently professional victims of a system ill suited to protect much less advocate the Indian interests.

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[119] 43 U.S.C. 1455.

[120] 25 U.S.C. 70; 25 U.S.C. 70 w;

[121] Numerous agencies, Fish and Wild Life, Recreation, National Parks, Bureau of Land Management all participate in the developments undertaken on the stream systems by the Bureau of Reclamation.

(d) *Conflicts within Justice Department respecting the American Indian rights to the use of water comparable to those within Interior:*

In fulfilling the responsibilities and exercising the powers conferred by Congress upon it concerning the American Indian rights to the use of water, the conflicts confronting the Department of Justice are similar—sometimes more severe—than those confronting the Department of the Interior. Charged with the obligation of prosecuting suits to protect and have Indian rights declared, that agency is likewise charged with the obligation of representing the United States when Indians seek restitution for seizure of their rights by other agencies of the government. Thus attorneys in the Department of Justice have actually been engaged in preparing to defend against claims asserted by the Indians simultaneously with another group of attorneys in the same division preparing to try suits to protect those Indian rights. As a consequence the attorneys acting on behalf of the fiduciary are confronted in the same office with the attorneys defending against the claims, thus presenting the irreconcilable conflict which could never prevail in a private law office.

When Indian rights to the use of water are being adjudicated on streams upon which the Bureau of Reclamation likewise is asserting claims, the Justice Department attorneys are confronted with perplexing, if not impossible circumstances, in representing the Indians and at the same moment representing the chief opponents of those Indian claims. Loss to the Indians, either actually through the form of the decree or subsequently the interpretation of it, starkly outlines the impossible situation in which the American Indians seek to have their rights preserved.

In the light of the preceding review there is a grave question whether the trust responsibility owing to the American Indians in regard to the economic development of their Reservations can be fulfilled by the Nation under the existing laws and administration.

ANALYSIS OF FEDERAL PERFORMANCE OF ITS TRUST RESPONSIBILITY TO INDIANS REGARDING WATER RIGHTS

Throughout this phase of the consideration an effort has been made to select and review representative areas throughout western United States to demonstrate the problem of protecting and preserving Indian *Winters Doctrine* rights. Without water in the arid and semiarid regions any program of economic development on the Indian Reservations must fail. Characteristic examples of the problem, which is widespread throughout the country, will be briefly discussed as they relate to the subject.

I. YAKIMAS' STRUGGLE TO PRESERVE THEIR RIGHTS TO THE USE OF WATER IN AHTANUM CREEK

(a) *Yakimas' immemorial rights:*

Few cases are better documented than that involving the struggle of the Yakimas and the Bureau of Indian Affairs to protect and preserve the rights of the Indians in Ahtanum Creek. The Ahtanum Creek is often considered the cradle of irrigation in the State of Washington.[122] There the Yakimas first irrigated their gardens in the late 1840's.

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[122] See above, footnote 13:

In 1855 the Yakimas entered into their Treaty with the United States and Ahtanum Creek was constituted the northern boundary of their Reservation. In the early 1860's lands north of the Creek were patented and early settlers occupied them. Without water neither the lands of the Indians south of the stream nor the non-Indian lands north of it could be successfully cultivated.

By the turn of the century the Indians had, by their own efforts, constructed several small ditches irrigating approximately 1,200 acres; the non-Indians by innumerable small diversions, irrigated an estimated 4,800 acres. Conflicts among the non-Indians over their respective rights in Ahtanum Creek gave rise to adjudications among themselves—not with the Indians.[123] Serious conflicts between the Yakimas and the non-Indians developed shortly after 1900.

The first record of a request to the Justice Department to protect the Yakimas' rights was August 23, 1906.[124] Almost a half century was to elapse before any action was taken. It is a history replete with evasions of responsibilities stemming from conflicts within the Federal Government, and with politically powerful non-Indian land owners.[125] During this period invaluable land of the Yakimas was to lie idle or only partially cultivated due to the diversion of water by non-Indians.

(b) *Conflicts within Interior between Bureau of Indian Affairs and Bureau of Reclamation in regard to claims of the Yakimas*

In 1906 the Bureau of Reclamation undertook the construction of the Yakima Reclamation Project. Ahtanum Creek is a tributary of the Yakima River from which the Reclamation Project was to receive its water supply. Reclamation officials were gravely concerned over the conflict between the Indians and non-Indians because it might interfere with the project they wished to build.[126] Chief among Reclamation's concerns were the principles of law the Bureau of Indian Affairs desired to rely upon to defend the Indian claims. Reflective of the agonizing impasse between contesting Bureaus within the Interior Department not only as to the rights to the use of water but as to the theory of law which would obtain, in this statement:

> "The Reclamation Service is endeavoring to build up the theory of appropriative rights as the most safe and most equitable guide for its operations, * * * It is understood that the Indian Bureau proposes to defend its water rights on Ahtanum Creek on the common law doctrine of riparian rights. *For one department of the Government to thus assume a position directly antagonistic to that assumed by another department of Government, it seems to me must prove embarrassing, particularly in view of the fact that the Reclamation Service is appealing to the various state legislatures to adopt an irrigation code based upon the doctrine of appropriation.*" [127] (Emphasis supplied)

That statement evidences the grave character of the conflict between two Bureaus functioning within the Department of the Interior. Rationale of that statement sixty years later is repeated and reaffirmed today as the Bureau of Indian Affairs and the Indians themselves seek to protect their interests against the steady encroachment upon the Indians' rights by the Bureau of Reclamation.

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[123] *Benton* v. *Johncox*, 17 Wash. 277; 49 Pac. 495 (1897); In re Ahtanum Creek, 139 Wash. 84; 245 Pac. 758 1926.

[124] Letter from Acting Secretary of the Interior to the Attorney General.

[125] For review of the documentation in regard to the procrastination and the reasons for it, a chronicle of the documents on the subject is set forth in 236 F. 2d 321, 328 et seq.

[126] Letter October 7, 1907 to the Secretary of the Interior from Indian Service Engineer Code.

[127] Letter October 1, 1907 from Reclamation District Engineer to Supervising Engineer.

(c) *Winters Doctrine enunciated and applied by the Judiciary; circumvented by the Executive Departments:*

In 1907 the Supreme Court enunciated the *Winters Doctrine*.[128] In 1908 the Court of Appeals for the Ninth Circuit in the case of *Conrad Investment Company* v. *United States*, in applying the *Winters Doctrine*, declared that the Indian rights to the use of water could be exercised "* * * not only for present uses, but for future requirements" on the Reservations, insuring economic development to meet increased needs.[129]

Consternation flowed from the pronouncement of the *Winters Doctrine* and its application in *Conrad*. That consternation was expressed, oddly enough, [130] by the Chief Engineer of the then Indian Service in carrying out an investigation which he was directed to undertake by the Secretary of the Interior. Having referred to the fact that the United States Attorney, as directed by "Washington" had postponed the litigation which was intended to protect the Indian rights in the stream, he recommended a settlement of the dispute, stating among other things:

> "The Reclamation Engineers in charge of the Yakima Project are very anxious that litigation may be avoided on the Ahtanum, fearing that * * * litigation * * * might stop all Reclamation work." [131]

He added that the *Winters Doctrine* might make a settlement difficult "in view of the recent Montana decisions, especially that of the United States vs Conrad Investment Co. * * *". Continuing, this investigator for the Secretary declared:

> "To a layman, it seems that, as between the early white settler, who has made prior and beneficial use of the waters of a boundary stream, and the Government, which, as guardian of the Indians' water rights, had *not* done so, the latter would be the party to make restitution to the Indians."

Code's letter to the Secretary of the Interior is reflective of the gravity of the situation facing the American Indians. As an employee of the Department of the Interior he was requested to investigate a conflict between the Indians and non-Indians. Recognizing the failure of the Department of the Interior to fulfill its trust responsibility to the Indians and to protect their rights, he recommended an abandonment of those rights to the non-Indians. He, moreover, concurred in the postponement of the initiation of proceedings by the Justice Department. Code's course of conduct was but one phase of an unconscionable course of conduct by two major Departments of the Federal Government which failed to protect the Indian interests in clear violation of their obligations.

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[128] See above, footnote 22, et seq.

[129] See above, footnote 34, et seq.

[130] It is of interest that Chief Engineer Code in regard to the Salt River Indian Reservation and Camp McDowell Indian Reservation, similarly was a party to seeking to deprive the Indians of the benefits of the Winters Doctrine. The infamous *Kent Decree* on the Salt River entered in 1910 is a part of Code's failure properly to assert the Indian rights. His activities have also been found in various other areas. His is but an example of employees in the Department of the Interior who totally ignore the fact that the Indians are entitled to protection in their claimed rights.

[131] Letter dated October 17, 1907, from Chief Engineer Code to the Secretary of the Interior.

(d) *The Interior Department attempts to give 75% of Indian Ahtanum Creek water to non-Indians and retain 25% for the Yakimas:*

Confronted with conflicts between the Indians and the non-Indians, obviously fearful that the Indian interests might prevail, pressured by the Bureau of Reclamation, and indeed, guided by the Chief Engineer of the Indian Service, the Secretary of the Interior by an agreement dated May 8, 1908, purported to grant to the non-Indians 75% of the Ahtanum Creek waters and to retain 25% for the Indians. Years were to pass before the Indians were informed of the greeement.

Repeated efforts were made by the Yakimas and the Bureau of Indian Affairs to seek redress for the great wrong thus perpetrated against the Indians. In 1915 the United States constructed the Ahtanum Indian Irrigation Project. Its benefits to the Indians were minimal due to the fact that after approximately July 10 of each year the non-Indians under the 1908 agreement received virtually all of the usable water in the stream.

Stunted crops, poverty, and bitterness on the part of the Yakimas whose lands were entitled to water from Ahtanum Creek were, of course, results of the 1908 agreement. Hostility between the Indians and the non-Indians was all-pervasive, becoming open struggles each irrigation season, accentuated when the yield of Ahtanum Creek was reduced by reason of a light snow pack in the mountains where it had its source.

When the Yakimas brought an action against the United States to protect their rights, Justice successfully moved to have the case dismissed for want of jurisdiction—for want of the legal capacity of the Indians to proceed against it for their own protection—notwithstanding the fact it adamantly refused to act for them.[132]

Politics always prevailed and no action was taken to restore to the Yakimas the invaluable water to which they were entitled under their Treaty. Those conditions continued for two generations with the attendant damage to the Indians.

(e) *Forty-one years after first request to Justice it filed action to quiet title to Yakima rights in Ahtanum Creek; fifty-eight years later the Yakimas recovered their rights; Yakimas forced to act to prevent loss of the rights which they had decreed to them:*

After repeated delays over a period in excess of forty years the Justice Department initiated an action to quiet the title to the rights of the Yakimas in Ahtanum Creek. In excess of fifty-five years after the matter was referred to that Department for action the Court of Appeals for the Ninth Circuit directed the entry of a decree awarding to the Yakimas each year: (1) all of the water of Ahtanum Creek after July 10, the commencement of the short water period;[133] (2) a right of reversion to the quantity of water strictly limited to irrigation the non-Indians are permitted to use during the period of high runoff, as those irrigation uses are reduced.[134] The non-Indians are permitted prior to July 10 of each year to divert up to 47 cubic feet per second of the flow of the stream, strictly limited to the purpose mentioned.[135]

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[132] See *Totus* v. *United States* in the United States District Court for the Eastern District of Washington.

[133] 330 F. 2d 897, 913, 915 et seq.

[134] 330 F. 2d 897, 913; the reversionary clause enunciated by the court is as follows: "when the needs of those parties, [i.e. these particular individuals] were such as to require less * * * then their rights to the use of the water was correspondingly reduced, and those of the Indians, in like measure, greater."

[135] NOTE: In addition the Court of Appeals recognized the Indian right to recover compensation for the severe losses they had experienced by the 1908 agreement. A claim previously filed by the Yakimas for the monetary loss was dismissed based upon the decree entered in their favor at the direction of the appellate court, all as reviewed above. C.f.s. is measurement of flowing water. The number of cubic feet of water flowing past a given point each second of time.

After the decree was entered in their favor as directed by the Court of Appeals, an effort was made to force upon the Yakimas a "settlement." When the Yakima Tribal Council was advised that Justice was contemplating a settlement, they came to Washington, informed the officials that they would reject any effort of that nature again to invade their rights. Had the Tribal Council failed to act promptly and vigorously they would undoubtedly have been subjected to another chapter of their history since 1906.

(f) *Economic development of Yakima lands curtailed by acts of Justice and Interior; effects of that conduct continues; threat of loss remains:*

Flagrant breach by the United States of the trust responsibility to the Yakimas most severely curtailed, for two generations' the economic development of the Indian land entitled to water from Ahtanum Creek. Yakima Valley is one of the world's great produce areas, especially for apples, cherries, pears, and similar fruit. Hops are an important crop. All require late water. Indian lands are some of the finest orchard acreage in the entire country. However, because of the agreement purporting to give to the non-Indians 75% of the water, fruit could not be successfully raised. Accordingly, the Indian lands only produced short-water crops, for example, grain and less than two full cuttings of alfalfa.

In the brief time since the decree was entered in their favor, alfalfa production has greatly increased. No longer are the lands limited to the short-water crops. Orchards are now being planted on a large scale, though production from them is, of course, years away. Income from the lands in question has risen by hundreds of thousands of dollars a year. Yet it is too clear for question that the Yakimas were gravely injured from the standpoint of economic development and that damage of necessity is continuing in character because of the retardation imposed by the unconscionable 1908 deal made without their knowledge.

Threats against the Yakimas' rights continue. The Bureau of Reclamation has attempted to secure their agreement to the construction of a reclamation project on Ahtanum Creek. Now well experienced, the Indians peremptorily reject that Bureau's activities. Yet the Bureau continues projects along the Yakima River and it is reasonable to expect that the Indians will be presented with further threats of seizure or invasion of their rights.

Another cause celebre involving the stifling of economic development of Indian lands by seizure of their water will now be considered.

II. Destruction of Pyramid Lake

(a) *Pyramid Lake not only an Indian, but a National asset of incalculable value:*

One hundred and twenty-five years ago General Fremont had this to say of Pyramid Lake which he discovered in 1844:

> "Beyond, a defile between the mountains descended rapidly about 2,000 feet; and filling all the lower space was a sheet of green water some twenty miles broad. It broke upon our eyes like the ocean. The waves were curling in the breeze and their green color showed it to be a body of deep water. For a long time

we sat enjoying the view. It was like a gem in the mountains which from our position seemed to enclose it almost entirely." [136]

Interior's Bureau of Outdoor Recreation, in 1969, reiterated Fremont's glowing description of Pyramid Lake:

> "Pyramid Lake by virtue of its leviathan proportions, year-round water-oriented recreation season, outstanding sport fishery potential, and wealth of aesthetic, geological, ecological, archeological and historical phenoma is presently a recreation resource of national significance.
>
> "Pyramid Lake offers greater undeveloped potential for supporting high-quality water-based recreation opportunities for a large number of users than any other lake in northern Nevada and California." [137]

Not mentioned by the last report is the potential destruction of Pyramid Lake if present plans of the Bureau of Reclamation are not changed.[138]

The history of Pyramid Lake is a reflection of the callous disregard of Indian property, their rights and interests. Moreover, it is a prime example of the disdain of unchecked political power exercised against a woefully weak minority deprived of any means of preserving the most elemental features of human dignity.[139]

(b) *1859–the establishment of the Pyramid Lake Indian Reservation*:

The Northern Paiute Indians were the victims of the westward movement of "civilization." In the late 1840's gold and silver brought miners to Nevada. Shortly thereafter the ranchers and farmers arrived. These lands so attractive to the miners and ranchers had been the home and abiding place of the Northern Paiute Indians who had adjusted to the desert environment and survived the rigors of it. To a marked degree the Paiutes gained their sustenance from fish taken from the Truckee River and Pyramid Lake. The Truckee River rises on the California side of Lake Tahoe, proceeds down the precipitous eastern slopes of the High Sierras, crosses the common boundary separating California and Nevada, and terminates in Pyramid Lake, which has no outlet.

> "* * * Captain John C. Fremont * * * reported: 'the [Pyramid] lake [in 1844] was found to be teeming with untold millions of brilliantly colored giant cut-throat trout. Indians came from as far away as the Great Salt Lake to obtain them for food.' " [140]

Forty-one years after this succinct statement by Fremont, the United States Geological Survey stated in 1885 that, "The [Pyramid] Lake is abundantly supplied with splendid trout, Salmo purpuratus Henshavi * * *." [141]

As an Interior Department Task Force observed: "The Paiute Indians of the Pyramid Lake were and are a fish-eating people. Their primary natural resource for many generations has been the Lake and its fish." [142] Because of conflicts between the settlers and the Northern

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[136] Harold W. Fairbanks, Ph. D., Berkeley, Cal., U.S. Geological Survey Library March 5, 1901 *The Popular Science Monthly*, 505, 507.

[137] 1969 *Report of Bureau of Outdoor Recreation*, page 14.

[138] See House Document No. 181, 84th Congress, 1st Session, Washoe Project, Nevada-California Letter from the Assistant Secretary of the Interior transmitting a report and findings on the Washoe Project, Nevada and California, pursuant to section 9(a) of the Reclamation Project Act of 1939 (53 Stat. 1187).

[139] See in this regard the articles in *The New Yorker*, January 1 through January 22, 1955.

[140] Action Program for Resource Development, Truckee and Carson River Basins, California-Nevada, 1964, p. 20.

[141] United States Geological Survey, *Geological History of Lake Lahontan*, Israel Cook Russel, 1885, page 62.

[142] *Action Program For Resource Development Truckee and Carson River Basins California-Nevada*, 1964, page 20.

Paiute Indians, the Pyramid Lake Indian Reservation was established in 1859. It is comprised of a limited land area which completely surrounds Pyramid Lake and embraces a segment of the Truckee River. From that date the Indians resided on the Reservation with the fishery constituting a source of subsistence and income.

In 1895, the National Geographic reported on the "abundant fish life" in both Pyramid and the then existing Winnemucca Lakes.[143] Immediately after the turn of the century there is reported the fact that Lake Pyramid" * * * is well supplied with large trout, as well as several other kinds of fish." [144]

Yet the task force in 1964 reported to the Secretary that:

> "The once famous cutthroat-trout fishery of Pyramid Lake and the lower Truckee River ceased to exist about 1938, largely because recession of the lake has made the lower river all but inaccessible to spawning fish. A trout fishery has been partially restored by natural and artificial means since 1950." [145]

(c) *The Newlands Federal Reclamation Project:*

In 1902 Congress enacted the Reclamation Act,[146] the objective of which, as reviewed above, was to make habitable the arid and semi-arid public lands, thus attracting settlers. Nevada's then Senator Newlands was a prime advocate of the Act. As a consequence the Newlands Reclamation Project was one of the first to be constructed.

Geography, history, and politics coalesce in regard to the Newlands Project and have spelled disaster to the Northern Paiutes. South of the Truckee River Basin—and entirely separate from it—is the Carson River Basin. That river, like the Truckee, rises in California and enters Nevada. Early settlers in Nevada diverted water from the Carson River to irrigate their lands. Like all western snow-fed streams, it is highly erratic, producing an abundance of water in the early spring and declining rapidly in flow as the snow melts away. The need to impound water for late season use was a necessity. Lahontan Reservoir on the Carson River was built to impound water from both that source and the Truckee River.

To the reclamation planners the yield of the Carson River was insufficient. They desired to provide additional water for the Newlands Project by the construction of the Truckee Canal to divert Truckee River water out of the Truckee River Basin away from Pyramid Lake for use in the Carson River Basin. That Canal was completed in 1906.

Grandiose plans for the Newlands Reclamation Project failed. Poor soil, a short growing season, poor drainage, and bad engineering contributed to that failure. Of a huge reclamation area originally planned to embrace 287,000 acres of irrigated land, the average annual irrigated area within the project, after sixty years of operation, has been estimated at slightly in excess of 50,000 acres.

Financial failure of the Newlands Project was, of course, the result of its physical failure. Write-offs of almost half of the interest-free Federal investment were made. Massive subsidies in addition to write-offs came from the sale of electricity and collection of grazing fees; other sources of income having no relationship to agricultural production from the irrigated lands, have kept this grossly submarginal project in existence.

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[143] National Geographic Society, *Physiography of United States, Present and Extinct Lakes of Nevada;* V. 1: 1896, pp. 101, 114, 115.

[144] *Popular Science Monthly*, Vol. 58, 1900–01, pp. 509.

[145] *Action Program for Resource Development*, etc. pages 26–27.

[146] See above, footnote 116, et seq.

(d) *Seizure of Indian Truckee River water without payment of compensation, for diversion out of the Truckee Basin for the Newlands Project and unconscionable waste of that water on the project, cause disastrous decline of Pyramid Lake and destruction of invaluable Indian fishery:*

From 1859 to 1910 there had been substantial irrigation development using Truckee River water in the Reno-Sparks area. Those diversions all within the Truckee River Basin did not seriously affect Pyramid Lake and Winnemucca Lake situated nearby, which actually fed from overflow from Pyramid Lake. A large part of the diversions after irrigation returned to the river and flowed into Pyramid Lake.

Diversions out of the Truckee River Basin to irrigate Carson Valley lands in the Newlands Reclamation Project, either directly or from impoundment in Lahontan Reservoir, drastically reduced the quantities of water entering Pyramid Lake.

Under a 1926 contract between the Secretary of the Interior and the Truckee-Carson Irrigation District, a Nevada public corporation, the District assumed the responsibility of administering the Newlands Project, including but not limited to the diversion of Truckee River water away from Pyramid Lake, with the disastrous consequences to that Lake which have been described.

For over forty years the District had practiced uncontrolled diversion of Truckee River water away from Pyramid Lake. In anticipation of the need to secure sufficient water for the Washoe Reclamation Project now under construction, changes were required in the diversions by the Irrigation District from the Truckee River. Even with those changes Indian water is grossly wasted by the District.

Seizure of the Indian rights to the use of water has been done without compensation to the Indians. If Congress authorized the condemnation of the rights of the Pyramid Lake Tribe—that matter has never been resolved—then there are two prime factors which have been totally ignored: (1) the Indians are entitled to payment for those rights which have actually legally been condemned;[147] (2) Indian rights, if in fact condemned, could not be taken for wasteful purposes because under the Reclamation Act, the basis, the measure, and the limit of any right on Reclamation Projects is beneficial use.[148]

Compensation for the Indian right of fishery, so wantonly destroyed, has not been paid. Yet, as reviewed above, that right of fishery, like the right to the use of water, is an interest in real property having the dignity of a freehold estate.[149] The injustice in the seizure of Indian rights without just compensation is underscored by this description of the Newlands Reclamation Project by a hydrologic engineer:

> "Of special interest to this study are the relatively large areas of non-agricultural land that consume river water either directly or indirectly. The survey shows 19,225 acres of permanent water surface and some 44,172 acres of dense and very dense phreatophytes. Thus, there are nearly 64,000 acres of heavy water con-

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[147] *United States* v. *Gerlach Live Stock Company*, 339 U.S. 725 (1949).
[148] 43 U.S.C. 372; 383 et seq.
[149] See above, footnote 21, et seq.

> suming nonagricultural lands or nearly as much area as was covered by agricultural crops in 1967. Although these lands are used for wildlife purposes, they have relatively little, if any, value for cattle grazing purposes." [150]

This report refers to the "extremely low efficiency of water use"—a kindly way of charging waste—on the Newlands Reclamation Project. It concludes in substance that even with an efficiency of 34%—roughly a waste of 66%—100,000 acre-feet of water annually could be saved for Pyramid Lake.

While Pyramid Lake was precipitously declining with an ever-increasing saline content—assuring the ultimate death of this great natural resource—the politically powerful forces in Nevada ignored the plight and poverty of the Northern Paiute Indians. The Bureau of Outdoor Recreation reported earlier this year the effects of diversions to the Newlands Reclamation Project, with its great waste.

> "Since 1910, however, the lake level has gradually been receding with the exception of a few brief periods when heavy runoff years once again revived the failing lake. Pyramid Lake is currently 82 feet below the lake level recorded 58 years ago and 72 feet below the lake level which Fremont saw in 1844.
>
> "The white man's tampering with related natural resources in the Truckee and neighboring Carson River basins has greatly accelerated the decline of the lake. Between 1888 and 1890, sawdust from upstream mills clogged the Truckee River channel just north of the lake and the river waters were diverted through Mud Lake Slough into the nearby and now dry Winnemucca Lake. The Indians dammed the Slough in 1890 and diverted waters back through their normal channel into Pyramid Lake. Later the Federal government, through the Bureau of Reclamation, began diverting water out of the Truckee River Basin into the Carson River Basin to supply irrigation waters for one of the first irrigation projects in the Southwest—the Newlands Project at Fallon, Nevada. These diversions began when Derby Dam on the Truckee River was completed in 1905 and have greatly accelerated the decline in the level of Pyramid Lake. An average of 250,000 acre feet is diverted annually out of the Truckee River Basin for irrigation uses on the Truckee Bench and the Newlands Project." [151]

(e) *Stifling of economic development on Pyramid Lake Indian Reservation by reason of rapidly declining water surface of Pyramid Lake:*

Reference has already been made to Pyramid Lake's great potential for recreation. Yet there has been nothing but the most meager development. Investors could not expend funds of any magnitude because of the imminent destruction of the Lake by Federal Reclamation Projects both existing and abuilding.

Poverty among the Pyramid Lake Tribe of Indians—despair and travail for generations—is the lot of these people by reason of the construction and operation of the Newlands Reclamation Project—a submarginal wasteful project—maintained with Federal funds.

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[150] *Report on Lower Truckee-Carson River Hydrology Studies*, by Clyde-Criddle-Woodward, Inc. Consulting Engineers, Salt Lake City, Utah April 1968.

[151] *1969 Report of Bureau of Outdoor Recreation*, pages 43–44.

(f) *Economic development of immense value to the Northern Paiute Indians and the Nation, if Reclamation Projects are prevented from destroying Pyramind Lake:*

If Pyramid Lake is not intentionally destroyed, economic development would be very feasible with high financial returns for the Pyramid Lake Tribe of Indians. As the Bureau of Outdoor Recreation states:

> "A properly developed Pyramid Lake will help meet the water-based recreation needs of a combined day-use and weekend/vacation-use (includes the San Francisco Bay Area) zone population of 13,814,243 in the year 2000. Visitation to Pyramid Lake in that year should total 2,375,000.
>
> "If Pyramid Lake's recreation resources are properly developed, significant tangible and intangible benefits will accrue to the U.S., Nevada, Washoe County, the Reno-Sparks complex, local interests and the Pyramid Lake Indian Tribe. The direct tangible economic benefits from recreation at Pyramid Lake could total $1,425,000 in general admission fees, $15,482,625 in visitor expenditures at the lake and over one-half million dollars in jobs annually by the year 2000. In the 32-year interim between today and the turn of the century, a total gross income from the admission fees and visitor expenditures generated by a developed Pyramid Lake would accumulate to an impressive $202,380,000. A developed Pyramid Lake will also generate additional annual expenditures in the millions of dollars by visitors outside of the recreation area for sporting equipment, car services, food, lodging, and gaming, etc."[152]

(g) *Final coup to Pyramid Lake—The Washoe Federal Reclamation Project:*

Demise of the "gem in the mountains," as Fremont described Pyramid Lake, is assured if the Washoe Reclamation Project now under construction is completed. Again, the interagency clash between the Bureaus of Reclamation and Indian Affairs, with the Indians victimized, has become intensified. In explicit terms the plans to build the Washoe Reclamation Project have been set forth; in explicit terms the Project can be constructed only by the seizure of the last vestige of the Indian rights in the Truckee River. Concomitantly the destruction of Pyramid Lake, for all practical purposes, is planned.

(i) *Stampede Dam on the Truckee River:*

The Stampede Dam is now being built on the Truckee River. It is a major component of the Washoe Project. Capacity for it is now planned at 225,000 acre-feet. If used as proposed under the Washoe Project it will take from Pyramid Lake the water required ultimately to stabilize it as a viable body of water, accentuate the decline of the lake, greatly increase the salinity of it, leaving it a dead sea.

(ii) *Watasheamu Reservoir on the Upper Carson River:*

Another major component of the Washoe Project is Watasheamu Reservoir on the Carson River. Substantial quantities of the waters which would flow down to the Newlands Reclamation Project, will be impounded in that reservoir for use in the Carson Valley above the Newlands Project Lahontan Reservoir.

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[152] Ibid. pages 15-16.

(h) *Seizure of Indian water to provide a supply of water for Washoe Project:*

When Carson River water is impounded at the proposed Watasheamu Reservoir, thereafter to be used above the Newlands Project, an equivalent amount of Indian water will be diverted from the Truckee River away from Pyramid Lake to compensate for it. That seizure of Indian water will, of course, accelerate the lake's already precipitous decline. Flood waters of the Truckee which historically could not be diverted through the Truckee Canal and away from Pyramid Lake have been the only source of the meager supply reaching Pyramid Lake. When Stampede Dam on the Truckee and Watasheamu Dam on the Carson River, with their planned appurtenant works, are in operation, the destruction of this great natural resource will be consummated; the Northern Paiutes will have suffered the final seizure of their property; the final indignity will have been heaped upon them, because they are without means to withstand the monolithic forces which have conspired against them.

(i) *Resolution of conflicts over contesting claims between the Newlands Reclamation Project and the Washoe Reclamation Project:*

Prodigal waste of water by the Newlands Reclamation Project could not be tolerated if the Washoe Reclamation Project was to become feasible. With the ingenuity of prime planners, using their immensely capable engineering staff, and with judicious use of their vast powers, the Bureau of Reclamation developed a plan.[153]

For example, no longer would the Truckee-Carson Irrigation District divert Truckee River "winter water"—not required for irrigation—for the generation and sale of electricity, with attendant income so profitable to it in the past. That water would have to be stored in Stampede Dam to meet the Washoe Project water requirements. A reduction would have to be made in the quantities of Carson and Truckee River waters wasted down the Carson River to maintain swamps for ducks. This would impinge to a degree upon Interior's Stillwater Wild Life Refuge—a fringe beneficiary of the excessive diversions of Indian Truckee River water to the Newlands Reclamation Project. Carson River water entering Lahontan Reservoir and there impounded for use on the Newlands Project would be drastically reduced by impoundments in the Watasheamu Reservoir for use in the Upper Carson Valley and above Lahontan Reservoir. To compensate for the reduction of Carson River water previously available, Truckee River water impounded in Stampede Dam would be diverted out of the Truckee River Basin in addition to that previously diverted away from Pyramid Lake.

Simply stated: All increased quantities of water required for the Washoe Reclamation Project would be taken away from Pyramid Lake to the further injury of the Northern Paiutes.

(j) *Pyramid Lake Indians object to Washoe Reclamation Project—they were momentarily appeased, then recognized the need to renew their opposition:*

Opposition to the Washoe Reclamation Project was interposed by the Pyramid Lake Tribe of Indians. Assurances were given by the

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[153] House Document No. 181, 84th Congress, 1st Session, Washoe Project, Nevada-California.

Department of the Interior that their interests would be preserved and, indeed, enhanced. They withdrew their opposition momentarily. There is thus presented a prime obstacle to preserving and protecting Indian assets within a single Department having as disparate and conflicting interests as the Reclamation Bureau and the Northern Paiutes. At all costs—invariably Indian costs—a consensus must be reached. Yet the elemental precepts of trust law reviewed above necessarily reject all acts of the trustee who bargains against the beneficiary for himself or any third party. Very properly the trustee is required that he have a single loyalty to the beneficiary. Yet the Department of the Interior was forced to weigh conflicting interests, the Indians with no political power against the powerful Bureau of Reclamation.

The substance of the assurances to the Indians was that in the administration of the conjunctive use of the waters of the two rivers, efforts would be made to maximize the use of the Carson River waters and to minimize the use of the Truckee River for the Newlands Project so that Pyramid Lake would be benefited. In actuality the Indians found that: (1) they would be deprived of the quantity of Truckee River water required to resolve the conflict between the two reclamation projects; (2) they would be stripped of the last vestige of the rights they claimed for Pyramid Lake to make the Washoe Project physically feasible.

When the light of those facts shone through, the Bureau of Indian Affairs withdrew its approval of the Departmental Task Force Report;[154] the Indians in effect joined the Bureau in its action.

(k) *Secretarial rules and regulations on the Truckee-Carson Rivers:*

Impossibility of fulfilling splintered and irreconcilable conflicts within the Department of the Interior is often glossed over by the issuance of rules and regulations which are a composite of vagaries enmeshed in contradictions. That course was pursued in regard to conflicting interests on the Truckee-Carson River Systems. The impossible objective was to stretch insufficient supplies to provide water for: (1) the Newlands Reclamation Project; (2) the Truckee Storage Project; (3) the Washoe Reclamation Project; (4) migratory birds; and (5) Pyramid Lake Indian Reservation.

Those rules and regulations were primarily to obtain sufficient water for the Washoe Reclamation Project, through further diversions of water away from Pyramid Lake and the limitation upon the grossly wasteful practices of the Newlands Reclamation Project, thus providing Washoe with water previously wasted by Newlands.[155] To placate the Paiute Indians—but never to recognize that the Indians had rights to maintain Pyramid Lake as a permanent viable body of water—the rules and regulations provided for the conjunctive use of the available supplies from those two streams, and that:

> "* * * coordinated operation and control of the Truckee and Carson Rivers in regard to the exercise of water rights of the United States * * * to (1) comply with all of the terms and provisions of the Truckee River Decree and the Carson River

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[154] Memorandum of July 14, 1966, from the Commissioner of Indian Affairs to the Chairman of the Task Force.

[155] Any doubt that the objective of the rules and regulations is to provide water for the Washoe Reclamation Project is removed when consideration is given to the above cited Washoe Project, Nevada-California, House Document No. 181, 84th Congress, First Session, and the plans now progressing to complete that project.

> Decree; and (2) maximize the use of the flows of the Carson River in satisfaction of Truckee-Carson Irrigation District's water entitlement and minimize the diversion of flows of the Truckee River for District use in order to *make available to Pyramid Lake as much water as possible.*" (Emphasis supplied)

The "as much water as possible" for Pyramid Lake is, of course, gratuitous and is not intended to be a recognition of the Indian rights to maintain the Lake.

Provision is also made in the rules and regulations that the Newlands Reclamation Project would receive an annual supply of 406,000 acre-feet of water. The rules and regulations provide that the 406,000 acre-feet of water annually "may be reduced." That concession came about only after bitter inter-agency struggles. Both the Indian Bureau and the Indians were well aware that the 406,000 acre-feet annual water allowance was tantamount to a guarantee to the Truckee-Carson Irrigation District that Indian Truckee River water would be wasted, as the quantity far exceeded that required for reasonable beneficial use on that project. Hence, the term "may be reduced" held out hope that the dissipation of Truckee River water with the attendant adverse effect on Pyramid Lake might be controlled.

As will be seen, the hope for better times for the Indians under the rules and regulations became a shadow with the substance passing to the Reclamation Bureau and its satellites.

(l) *The "nine-point package agreement":*

Limitation upon the Newlands Reclamation Project—administered by the politically powerful Truckee-Carson Irrigation District—was neither undertaken lightly nor accomplished with ease. Without restrictions on the historic waste of that ill-starred project there would be insufficient water for the Washoe Reclamation Project, even with the seizure of all of the Indian water in the Truckee River that could be economically diverted away from Pyramid Lake for Washoe.

There emerged the "nine-point package agreement"—thus named by its sponsors. It is important here primarily because it resuscitated the then expiring Washoe Reclamation Project which, as stated, is the terminal catastrophe to the Northern Paiutes. Principally from the standpoint of the Indians the "package" provides for an increase of acreage above the historic 51,000 acres annually irrigated on the Newlands Project, to 74,500 acres and for an assured firm annual supply of 406,000 acre-feet of water. No reduction in the 406,000 acre-feet would be permitted as provided for in the much publicized but largely vacuous rules and regulations, except that "The Department [of the Interior] would reserve the right to commence suit to challenge the correctness of" the 406,000 acre-feet allocation for the Newlands Reclamation Project. Conveniently left open were the type of action which would be brought, the issues that would be tried, by whom, against whom, when and in what court. Indeed, the Secretary of the Interior might well be one of the prime parties against whom the Indians would proceed.[156]

Ultimately, the Northern Paiutes were again left with an illusion and the Washoe Reclamation Project moved nearer to completion when peace was purchased from the Truckee-Carson Irrigation

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[156] See exchange of correspondence respecting "nine-point package agreement" dated July 13, 1967, August 10, 1967, related documents, between Department of the Interior and the Truckee-Carson Irrigation District.

District—purchased, let it be emphasized, with water desperately needed by the Northern Paiutes to maintain Pyramid Lake.

(m) *Decrees unenforced—need to "settle" Alpine Case to assure Carson River water for Watasheamu Reservoir—Indian Truckee River water would be seized to compensate Newlands Reclamation Project for loss of Carson River water:*

A Temporary Restraining Order was entered in March 1950 which is a preliminary adjudication of rights on the Carson River including those of the United States required for the Newlands Reclamation Project.[157] That Order is based largely upon the evidence introduced by the Justice Department in support of the direct flow and storage rights asserted for the Newlands Project. The decree has never been enforced. Had that decree been strictly enforced with Carson River water being diverted only for beneficial purposes in the Upper Basin of the Carson River, based upon priority and limited to the acreage set forth in the decree, and had the beneficial use requirements been enforced against the Newlands Reclamation Project, it would have greatly reduced the quantity of water to be diverted out of the Truckee River for that project. The Indians and Pyramid Lake would have benefited greatly for every acre-foot of water from the Carson River diverted without right under the decree, or wasted, must be replaced with Truckee River water. Failure to enforce the March 1950 decree and reducing the need for Truckee River water in the Carson Valley, is demonstrative of the need for policy changes and the elimination of conflicts between agencies of the Department of the Interior.

Economic development of Pyramid Lake has been retarded not by a single act or omission by the federal establishment, but rather by a composite of seemingly disparate events—failure, for example, to enforce the decree in the *Alpine Case*. Yet upon examination of all of the facts, it is evident that this omission to fulfill the trust obligation to the Indians stems directly from the conflict among federal agencies for the waters of the Carson and Truckee Rivers.

(n) *Enforcement of the rights and priorities in the Alpine Decree would prevent construction of Reclamation's Watasheamu Dam, a major component of the Washoe Project:*

The broad plan for the Washoe Project involved taking Carson River water from the Newlands Reclamation Project and compensating Newlands with increased diversions of Indian Truckee River water away from Pyramid Lake. That exchange of Newlands Carson River water constitutes the use of trust property for the benefit of the trustee to the irreparable damage of the beneficiary of the trust.

To use Newlands Carson River water at Watasheamu Reservoir and its appurtenances requires the abandonment by the United States of its invaluable priorities on Newlands which are set forth with specificity in the Alpine 1950 decree. Enforce those priorities and there would be no Watasheamu Reservoir and Reclamation's plans would be thwarted. The Criddle Report summarizes the need to abandon the Federal Newlands rights to accomplish Reclamation's plans for Watasheamu:

> "Studies by the Carson River Hydrology Task Force indicate that if prior rights are respected [those of the United States for

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[157] *United States v. Alpine Land & Reservoir Company, et al.*, Defendants, in the United States District Court for the District of Nevada, Equity No. D-183.

the Newlands Project, and all others], little water would be available for Watasheamu and that under the above Secretarial policy, it seems mandatory that rights be respected if such action affects the demand on Truckee River." [158]

(o) *Northern Paiutes forced to expend their meager resources to prevent "settlement" by Justice of Alpine Case; Justice opposes Indians:*

Repeatedly the Federal Establishment has attempted to secure a settlement of the *Alpine Case* with the politically powerful landowners in the Upper Carson River Valley. Those owners will not tolerate interference with their historically wasteful practices of diverting Carson River water without controls of any kind, including headgates, measuring devices, or any other means of administration usually applied in western United States, all in violation of the decree Justice had entered in March 1950.

A settlement which would please those powerful landowners in the Upper Carson by freeing enough Carson River water from the Newlands Project to make feasible the Watasheamu Reservoir was the objective of the innumerable meetings between Interior, Justice, and the lawyers representing the Upper Carson landowners. As the negotiations progressed the Northern Paiutes and the Bureau of Indian Affairs were frustrated in every attempt to prevent the arrangement with the attendant increased call for water from the Truckee River.

Confronted with sure disaster if the "settlement" was consummated, the Northern Paiutes, through their attorneys, filed a petition to intervene in the *Alpine Case*. In their petition to intervene the Indians alleged the failure of the United States properly to perform its functions as their trustee, the irreparable damage they suffered from the waste of water, and the failure of the United States to enforce the March 1950 decree. To that and other allegations of the failure of the trustee, Justice responded as follows:

> "The United States admits a reluctance to insist upon enforcement of the [1950] temporary decree insofar as it differs from the Report of the Special Master.
>
> [The Report which, if approved by the court, would be clearly at variance with the evidence introduced by Justice, particularly in regard to the strict enforcement of priorities, beneficial use and related restrictions upon upstream water users, with the attendant increase in demands for Truckee River water.] If this is construed by this Court as a failure of the fiduciary duty of the United States to the Applicant, then the United States herein immediately requests complete enforcement of the temporary decree whether or not Applicant is allowed to intervene."

Because Justice had declared that the Indians' effort to intervene and thus assist themselves in the protection of their rights constitutes an adversary proceeding, it refused to supply the Indians with the exchange of correspondence and related data between the Department of the Interior and Justice. Justice, moreover, succeeded in having the court deny the Northern Paiutes their day in court. An appeal has been filed by them to the Court of Appeals for the Ninth Circuit and is now pending.

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[158] *Report on Lower Truckee-Carson River Hydrology Studies* * * * by Clyde-Criddle-Woodward, Inc. Consulting Engineers, Salt Lake City, Utah April 1968.

Caught between the monolothic Departments with their conflicting responsibilities, the Northern Paiutes–poverty-stricken, destitute–are expending their meager funds to defend themselves against the Federal agencies, including their lawyers within the agencies.

Intervention by the Northern Paiutes in the *Alpine Case* has been fruitful. They stopped the settlement so disastrous to them. However, they had the power of their opponents brought forcefully to their attention. Incredibly the long-disputed California-Nevada Compact was revised to include the main thrust of the "settlement." Nevada's legislature has approved it. California's legislature adjourned without approving the compact.

(p) *Discriminatory interpretation of Orr Water Ditch Decree against the Northern Paiute Indians—thwarted economic development of Pyramid Lake:*

Provisions in the *Orr Water Ditch* decree adjudicating the rights to the use of waters of the Truckee River, primarily for purposes of irrigation, have been used to discriminate against the Pyramid Lake Tribe of Indians, sometimes in this consideration referred to as the Northern Paiutes.

An all-important element in the ownership of the water rights is the ability to change the place of use and purpose of them. Similarly the right to sell, transfer, or exchange water rights is a primary ingredient, as in the title of any property. Indeed, freedom from restraints against the alienation, use, sale, or disposition of property in the absence of injury to others is a basic precept of the law. However, the decree entered pursuant to the consent of Interior and Justice Departments, adjudicating Indian irrigation rights to the use of water, was declared to impose upon those Indians' rights the most severe limitations.

On May 5, 1955, the Solicitor ruled as follows:

> "This is in response to an inquiry you have received whether water available for the irrigation of Pyramid Lake Indian lands may be allowed to flow into Pyramid Lake in aid of the fish resources of the Reservation.
>
> * * *
>
> "The Truckee River decree is specific as to the use of water under the rights adjudicated to the Indians and other parties under the decree. In these circumstances, it is my opinion that the Indians do not have the right to divert the use of the water adjudicated to them by the said decree to the propagation of fish resources in Pyramid Lake." [159]

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[159] No. M-36282, May 5, 1955, from Associate Solicitor, Indian Affairs to Commissioner of Indian Affairs. The portion of this ruling omitted in the text reads as follows:

"The Pyramid Lake Reservation was created before Nevada statehood by the withdrawal of lands by the Department November 29, 1859, later confirmed and approved by Executive Order of President Grant dated March 23, 1874. The area was a part of the land acquired by the United States in a cession from Mexico in 1848. The Lake is approximately 30 miles in length and 10 miles wide at its broadest point and is entirely within the Reservation.

"The Indians have adjudicated water rights in Truckee River which flows through a portion of the Reservation and empties into the Lake. These water rights were awarded by final decree entered September 8, 1944, by the United States District Court, District of Nevada equity—Docket No. A3, in the case of *United States of America* v. *Orr Water Ditch Company, et al.* Under the decree the Indians are entitled to a maximum of approximately 30,000 acre-feet of water per year for irrigation and domestic uses.

"It is fundamental in irrigation law that there can be no ownership of the corpus of water flowing in a stream prior to its being diverted from the stream into canals, ditches or reservoirs of the party entitled to use the water (Kinney on Water Rights, Vol. 2, 2nd ed., p. 1340). 'Neither sovereign nor subject can have any greater than a usufructuary right in running water.' (Kinney on Water Rights, Vol. 1, 2nd ed., pp. 548–549 and cases there cited). It is also a familiar rule that water adjudicated for irrigation purposes if not utilized for that purpose must be allowed to flow downstream for the benefit of other water users with later rights in the stream."

Those severe limitations imposed by the *Orr Water Ditch* decree upon the Indians' rights is contrasted in regard to the non-Indians' rights under that decree:

> "Persons whose rights are adjudicated hereby, their successors or assigns, shall be entitled to change, in the manner provided by law the point of diversion and the place, means, manner or purpose of use of the waters to which they are so entitled or of any part thereof, so far as they may do so without injury to the rights of other persons whose rights are fixed by this decree."

Ridiculous though the Solicitor's opinion may be—inept; unprofessional; failing to mention much less consider the legal issues involved in the change of place of use or purpose of rights to the use of water—no mention is made that the water for the purposes of the fishery could injure no one, the Indians being the last users on the stream, no mention is made of the unconscionable limitations consented to by Interior and Justice which the decree imposes upon the Indian rights and no mention is made of the surplus waters in the Truckee River which the Bureau of Reclamation was to attempt to seize for the Washoe Project and to which the Indians obviously are legally entitled. That opinion, nevertheless, had this very salient, destructive effect upon the Indians: It became the law of the Department of the Interior to the irreparable damage of the Northern Paiute Indians, constituting a barrier to the economic development of the vast potential of Pyramid Lake and the Truckee River for the benefit of the Indians. It was, indeed, the party line upon which the Washoe Reclamation Project was to proceed in the attempt, not yet consummated, to seize the last of the Indian Truckee River water.

Nine years after this Solicitor's opinion, in October 1964, the Secretary of the Interior approved and adopted a report entitled, "Action Program for Resource Development Truckee and Carson River Basins, California-Nevada." No effort was made to preserve Pyramid Lake. Rather the decline and ultimate destruction of the Lake by the Newlands Reclamation Project and the Washoe Reclamation Project was prognosticated. Recommendation No. VI of the Report did provide that Justice would be requested to seek an amendment to the *Orr Water Ditch* decree permitting the Indians to use the meager quantity of water allowed to them for irrigation—30,000 acre-feet annual maximum—for purposes of fishery.[160]

By a letter dated November 2, 1964, the Department of the Interior requested Justice to bring an action because "The Indians want to use part of their decreed water for reestablishing the fishery at Pyramid Lake." No effort was to be made to preserve the Lake, planned out of existence by the Bureau of Reclamation.

Legalisms, never researched, but only vaguely formulated among the Interior and Justice lawyers, caused the request of November 2, 1964, to amend the *Orr Water Ditch* decree, to languish and no action to this date has ever been taken in regard to it.

(q) *Successful demands to reconsider Interior's legal and policy decisions made by Bureau of Indian Affairs and by the Indians:*

Freeing the Indians from the restrictions imposed upon them entailed months of disengaging action. By 1966 the Bureau of Indian

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[160] *Note:* The vast proportion of the decreed rights could never be used by the Indians for purposes of irrigation by reason of the Nation's failure to build a project which could use it, and the dilapidated condition of the small project now in existence.

Affairs and the Indians were able to demonstrate the needless disaster being imposed upon them through the planned destruction of Pyramid Lake.[161] In July 1966, the Commissioner of Indian Affairs withdrew the Bureau's approval of the October 1964 Action Program Report. The press came to recognize the plight of the Indians and the news media brought forcefully to the attention of the public the manner in which the great Indian and national asset was being destroyed. Ultimately the struggle to preserve the Lake with its vast potential was being recognized.

(r) *California-Nevada Compact—A grave peril to the Indians and to Pyramid Lake:*

In keeping with the concept of the Bureau of Reclamation and the Truckee-Carson Irrigation District that the Indian Truckee River rights to the use of water could be seized without compensation (destruction of the famous fishery, indeed, the destruction of Pyramid Lake itself with poverty-in-perpetuity for the Indians, would be countenanced without a struggle), the California-Nevada Compact purporting to divide between the States the waters of the Truckee, Carson and Walker Rivers was prepared. The Compact, so clearly violative of the Constitution of the United States, so flagrantly an invasion of the Nation's rights, powers and obligations to the Indians, was rejected out of hand by the Federal Government.[162]

A revised 1968 Compact was adopted by the California and Nevada Commissioners. It had all the objectionable features of the earlier compact with this addition: It set forth the "settlement" which the Interior-Justice-Upper Carson River water users had failed to consummate by reason of the intervention in the *Alpine Case* by the Northern Paiutes. Seldom has such power politics been used to strike down Indian claims. Failing to succeed when the Indians intervened in *Alpine*, the Nevada Compact Commissioners cooperated by writing the substance of the unconscionable "settlement" into a compact and received approval of it by the Nevada legislature. Again strenuous objection was interposed to the compact by the Federal Government and the Indians.[163]

Losing in their own State of Nevada in their struggle against the destruction of Pyramid Lake, the Northern Paiutes received gracious treatment by California's legislature. Secretary Hickel's letter of March 18, 1969, strongly opposed the Compact. The Indians and their lawyers were heard by the California representatives. On March 20, 1969, the Indians received a reprieve from destruction by the California-Nevada Compact—at least momentarily—by reason of an amendment California has proposed, exempting the Indian rights from the operation of the Compact.

(s) *Ambivalence within the Department of the Interior respecting Indians exemplified by Pyramid Lake struggle:*

Ambivalence is the hallmark of Interior in regard to its trust responsibility towards the American Indians. Practical politics—the lifeblood of the Bureau of Reclamation—are daily confronted with good conscience and the need to fulfill the trust responsibility to the Indians. Erosion of Indian title to rights to the use of water is the consequence. Congressional enactments and reclamation project approval clash with obligations owed by Interior's Secretary to the Indians. Agonizing appraisals and reappraisals are made; reports are written and speeches given. Yet none of them produce sufficient water—indeed, any water—to provide for the Indians and the *plans* of Reclamation for its projects.

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[161] Pyramid Lake in Nevada is not only a Home, Abiding Place and a Source of Livelihood for Northern Paiute Indians—it is a National Asset: of Great Scenic Beauty; with Vast Potential for Recreation; of Historic Import; of Scientific significance—It Must Be Preserved.

[162] See letter April 22, 1966, Assistant Secretary Anderson to Bureau of the Budget. Also Analysis of *California-Nevada Interstate Compact concerning waters of Lake Tahoe, Truckee River, Carson River and Walker River Basins* dated January 20, 1966.

[163] See letter January 14, 1969, Secretary of the Interior to Bureau of the Budget.

Life or death of Pyramid Lake is the perfect example of Interior's agonizing, for:

1. Destruction of Pyramid Lake is assured if the Washoe Reclamation Project is constructed. The United States cannot have Pyramid Lake and the Washoe Project; there is simply insufficient water in the Carson and Truckee Rivers for the Lake and the Project.
2. Destruction of Pyramid Lake is assured if the contract now approved by Interior is authorized by Congress, increasing the Newlands Reclamation Project from its historic average irrigated acreage of 51,000 acres to 74,500 acres, guaranteeing a firm supply of water to the Newlands Project of 406,000 acre-feet annually.

Interior proceeds with the construction of the Washoe Reclamation Project.

Papers are written in regard to Pyramid Lake and its vast potential for public benefit—witness the 1969 report of the Bureau of Outdoor Recreation alluded to above.

Promises are made of litigation to protect the Indian rights in the Truckee River and Pyramid Lake. Currently the Solicitor's Office refers to a letter to Justice requesting that court action.

Contracts are signed to assure 406,000 acre-feet of water annually to Newlands Reclamation Project and increased water right acreage to 74,500 acres.

The harsh fact is this: Reclamation obtains action—results of practical politics; the Indians receive words—results of good conscience being placated.

Water required for the Washoe Reclamation Project is to be obtained through prohibiting Newlands grossest waste, nevertheless gravely wasteful practices still continue on Newlands. When occasional momentarily available quantities of water enter Pyramid Lake, they are loudly trumpted as being evidence of Indian protection.

When Nature supplies a huge snow pack in the high Sierras—at widely spaced intervals over the years—and the existing Reclamation facilities cannot carry the volume of runoff, some of the water must enter Pyramid Lake. This is not looked upon by Reclamation as an Act of God, but a spiritual rapport between conflicting agencies. But this vanishes when another Act of God results in a light snow pack and short water supply; or more practically when Recalmation has completed Stampede Reservoir on the Tuckee; Watasheamu on the Carson.

(t) *Congress alone can preserve Pyramid Lake:*

This is not a new story in Indian history. It is no different today than when President Andrew Jackson nullified the Supreme Court' decision by simply refusing to permit its implementation by Executive action and a grave stain never to be removed, was indelibly written on a Nation's conscience.[164] Nor is it different than when Congress passed the Act of August 1, 1914, to restore *Winters Doctrine Rights* to the Yakima Indians who, Congress said, "have been unjustly deprived of the portion of the natural flow of the Yakima River to which they are equitably entitled."

What is being done to the Northern Paiutes today differs not at all from what Jackson did to the Cherokees; only the dates and the names are changed, with one exception—the Northern Paiutes have no place to go.

Congress can stop the inhumanity being perpetrated on the Northern Paiutes. It can:

1. Refuse to appropriate funds for the Washoe Reclamation project or vitiate Congressional approval of the project;
2. Refuse to appropriate funds to carry out the contracts which would enlarge the Newlands Reclamation Project beyond its historic irrigated acreage and limit the project to beneficial use of all waters diverted to it, thus striking down the firm supply of 406,000 acre-feet of water which the contracts in question would guarantee;
3. Refuse to approve the California-Nevada Compact if it fails to protect, preserve and guarantee the Indian Truckee River rights and their right to maintain Pyramid Lake as a permanent viable body of water.
4. Direct Justice to fulfill its responsibilities in regard to the protection of the rights of the Northern Paiutes in the Truckee River and Pyramid Lake, to desist from opposing the Indian efforts to protect themselves by intervening in the *Alpine Case*, but rather to assist them in it, and to have the principles of beneficial use of water enforced under the *Orr Water Ditch* decree on the Truckee River and the *March 1950 Decree* on the Carson River.

Finally, if Congress were to declare that Pyramid Lake should be preserved for the benefit of the Indians and the nation and that the fisheries destroyed by diversions to the Newlands Reclamation Project should be restored, a long step would be taken in correcting one phase of innumerable, sometimes ghastly, wrongs perpetrated on the Northern Paiutes.

III. Policies Past, Present and Future in Regard to the Indian Rights to the Use of Water in Lower Colorado River Valley—A Crucible

Politics and water readily mix creating an unstable, volatile combination. Only the strong prevail when confronting the combination. That is, of course, the Indian problem in general, and most particularly in the Lower Colorado River Valley. Economic development of Indian lands has long been retarded by reason of politics in and out of the Interior Department.

(i) *Arizona v. California, United States, Intervener:*

Arizona had failed in the Supreme Court because in early cases the United States had been declared an indispensable party, which was immune from suit and had failed to evidence an inclination to become a party to a suit to have adjudicated the rights to the use of water of the Colorado River. That stream drains 244,000 square miles in seven States, with every square mile and drop of water an intemperate political issue.[165]

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[164] Schmekebier, The Office of Indian Affairs, page 35.

By the end of the 1940's and the early years of 1950, population pressures in the Southwest—particularly the California and Arizona area—forced the National Government to reconsider its historical reluctance to become a party to the gruelling struggle among the sister States of the Colorado River Basin. Conversations within Justice were undertaken and the matter fully reviewed with Interior. At the first meeting after it was agreed the suit would be initiated, this strong caveat was given: Play down the Indian rights! To that caveat the response was made that there probably would not be a justiciable issue in the case if the Indian rights were played down.

On November 2, 1953, the "Petition of Intervention on Behalf of the United States of America" was filed in *Arizona* v. *California*. Among other things, the petition alleged the United States of America was the trustee for the Indians and Indian Tribes and asserted

> "that the rights to the use of water claimed on behalf of the Indians and Indian Tribes as set forth in this Petition are prior and superior to the rights to the use of water claimed by the parties to this cause in the Colorado River and its tributaries in the Lower Basin of that stream." [166]

Immediately an all-out attack was launched against the Attorney General. The powerful politicians and their political attorneys from the Lower Basin States would not tolerate the assertion that Indian claims were "prior and superior" to the claims of the States. Yet the petition with the required copies had been filed. No real problem, said the powerful ones—withdraw the petition, strike the offending passage pleaded on behalf of the Indians, and refile it. That was done. The truncated version reads as follows:

> "XXVII
>
> "The United States of America, as trustee for the Indians and Indian Tribes, claims in the aggregate on their behalf rights to the use of water from the Colorado River and its tributaries in the Lower Basin of that stream in the States of Arizona and California as set forth in Appendix IIA of this Petition." [167]

Thus the odd-looking page 23 of the present petition, with its wide spaces between the lines, is explained. It suffered from power failure by those inclined towards the Indians.

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[165] *Arizona* v. *California*, 298 U.S. 558 (1936).

[166] Petition of Intervention, *Arizona* v. *California*, No. 10 Original, filed November 2, 1953, Paragraph XXVII, page 23.

[167] The two provisions are set forth here in full: From first Petition filed November 2, 1953:

"XXVII

"The United States of America, as trustee for the Indians and Indian Tribes, claims in the aggregate on their behalf rights to the use of water from the Colorado River and its tributaries in the Lower Basin of that stream in the States of Arizona and California as set forth in Appendix IIA of this Petition. The United States of America asserts that the rights to the use of water claimed on behalf of the Indians and Indian Tribes as set forth in this Petition are prior and superior to the rights to the use of water claimed by the parties to this cause in the Colorado River and its tributaries in the Lower Basin of that stream."

From Petition filed December 1953:

"XXVII

"The United States of America, as trustee for the Indians and Indian Tribes, claims in the aggregate on their behalf rights to the use of water from the Colorado River and its tributaries in the Lower Basin of that stream in the States of Arizona and California as set forth in Appendix IIA of this Petition."

The Supreme Court in *Arizona* v. *California*, applied the principles of *Winters, Conrad Investment Company, Walker River, Ahtanum*, declaring the basic concepts of those cases to be applicable to reserved lands of the United States. [168] However, there are aspects which require most careful consideration.

(ii) *State apportionment threat to economic development of the Indian Reservations under Arizona v. California*:

Politics smothered the rights of the Indians to assert their claims against the entire Colorado River System. Those rights are properly against the river—not political subdivisions, but the Upper Basin States (Wyoming, Colorado and Utah) where most of the water rises, had the political power to stay out of the case. As was pointed out in regard to the *Winters Doctrine Rights*, they are against the stream system:

> "The suggestion that much of the water of the Ahtanum Creek originates off the reservation is likewise of no significance. The same thing was true of the Milk River in Montana; and it would be a novel rule of water law to limit either the riparian proprietor or the appropriator to waters which originated upon his lands or within the area of appropriation. Most streams in this portion of the country originate in the mountains and far from the lands to which their waters ultimately become appurtenant." [169]

In sharp contrast to the principles enunciated—invariably applied—the Supreme Court in *Arizona* v. *California*, drastically limited the Indian rights:

> "* * * we note our agreement with the Master that all uses of mainstream water within a State are to be charged against that State's apportionment, which of course includes uses by the United States." [170]

As a consequence the Indians are at the mercy of the wheeling and dealing by the states as they attempt to obtain projects and water. A most ominous threat to the Colorado River Valley Indians is the fact that the Colorado River has been outrageously overappropriated. Where the water for the Central Arizona Project, in the light of guarantees to California, must come from should be clear warning to the Indians. The same powerful people who forced the Attorney General to change the Petition in *Arizona* v. *California* are exercising those powers—powers that can strip from the Indians the rights which originally were to be "played down." Economic development has thus been thwarted on all Indian Reservations in the Colorado River Valley.

(iii) *"Giveaway" of 1,500 acres of Mohave Indian land:*

Without notice to the Fort Mohave Tribe of Indians or to the Bureau of Indian Affairs, the Solicitor's Office conducted a proceeding initiated by California in the Bureau of Land Management. 1,500 acres of invaluable Indian land was awarded to California by a decision dated March 15, 1967, allegedly as coming within the Swamp and Overflow Act. Only by chance when the matter was then on appeal did it come to the attention of the Bureau and the Indians.

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[168] See above, *Winters Doctrine*, footnote 22, et seq.
[169] *United States* v. *Ahtanum Irrigation District*, 236 F. 2d 321, 325.
[170] 373 U.S. 546, 601.

Efforts by the Bureau of Indian Affairs to intervene were denied—the Solicitor, it was said, perhaps facetiously but none the less officially, was representing the Bureau, although the Bureau was given no notice or opportunity to be heard. Under most severe restrictions the Indians were allowed drastically limited intervention. An astounding fact was forcefully brought to the Indians' attention: The Solicitor's position was not the lawyer for the Trustee, the United States; rather he emphasized, he was Judge and in fact owed a trust obligation to California. Anomalous? Not at all; that's the law as enunciated by the Solicitor. The matter is now before the Secretary of the Interior for reconsideration. It is but a single example of outrageous conduct by conflicting agencies within the Interior Department, perpetrated against the Mohaves in regard to their lands which are inseparable from their rights to the use of water.

(iv) *Conflicts within Interior—Failure to protect and define boundaries, rights to the use of water:*

Grave damage to the economic development of the Colorado River Indian Reservation has occurred and is occurring, due to the failure of conflicting federal agencies to resolve basic differences. Lands have been separated from the Reservation and Indian occupancy lost for periods up to half a century.

A boundary dispute lasting virtually one hundred years, recently brought out an irrational opinion which declared: The boundary was the unknown high-water line in 1876, but for "administrative convenience" another line could be used. This opinion has created administrative and jurisdictional problems which cause economic chaos, not development. Moreover, even more damaging to the Indians is the loss of between 2,000 and 4,000 acres of invaluable lands and rights to the use of water in the Colorado River.

Loss of land and rights to the use of water on the Colorado River Indian Reservation reflect only part of the damage. In an area where recreation, year-round, is rapidly growing, the loss of access to the Colorado River has prejudiced and will continue to gravely prejudice economic development for these Indians.

(v) *Fort Yuma Indian Reservation:*

This tormented Indian Reservation has suffered more than most. In 1893 the Indians had an agreement imposed upon them by force. All facts point to fraud, diverse and general culpability on the part of officials of the national government. Those who refused to sign for the Indians were whipped into submission. Others, it is reported, were held in jail for months without charge.

Purportedly the Yumas—Quechans as they are known—were to retain some of their irrigable lands. Other lands were to be sold and payment made to the Indians. They were not sold. Title remains in the United States. Today the Bureau of Land Management is leasing land taken forceably from the Yumas. Those lands are being irrigated and rental for irrigated lands is collected by the last named Federal agency. The question is raised, How can these lands be declared non-irrigable—as they have been—when they are in fact irrigated?

Simple enough, the Bureau of Reclamation states they are non-irrigable! By that fiat the Indians are deprived of their lands and the economic development of the Reservation delivered a smashing blow.

IV. MISSOURI RIVER BASIN—A VAST AREA WHERE ECONOMIC DEVELOPMENT HAS BEEN DEFEATED BY FEDERAL AGENCIES, LAWS AND POLICIES

(i) *Seizure by the Bureau of Reclamation of Fort Peck Indian water supply:*

The Fort Peck Indians owned invaluable *Winters Doctrine Rights* in the Milk River. The Bureau of Reclamation built the Milk River Reclamation Project. It seized the Indian water without compensation and is using it on the Reclamation Project. As a consequence the economic development of the Fort Peck Indian Reservation was gravely retarded. Confronted with the Bureau of Reclamation, water was sought from another source and at great cost the Indian project was reconstructed.

(ii) *Seizure without right or compensation of Indian rights to the use of water at Yellowtail Dam on the Crow Indian Reservation and elsewhere in the Missouri River Basin:*

One of the most flagrant examples of the Bureau of Reclamation's disregard of Indian water rights will be found at Yellowtail Dam and Reservoir in Montana's Crow Indian Reservation. There the Bureau of Reclamation not only did not pay the Crows for their *Winters Doctrine Rights* in the Bighorn River, but is selling the Indian water, depositing the proceeds to a non-Indian account, and seeking to charge coal developers on the Reservation for Indian water, thus driving down the payment the Indians will receive for their coal.

Detailed reviews of the principles of the *Winters Doctrine Rights* have been made including the Crow Indian Yellowtail Dam matter.[171] Time and space do not permit a review of all damage done to Indian rights to the use of water throughout the Missouri River Basin, and its effect upon the economic development of the many Reservations in the Valley. That damage is high and is continuing.

V. CALIFORNIA'S INDIANS ROBBED OF THEIR RIGHTS TO THE USE OF WATER; FAILURE OF THE UNITED STATES TO FULFILL ITS OBLIGATIONS; GRAVE CONFLICTS WITHIN FEDERAL ESTABLISHMENT DEPRIVES CALIFORNIA'S INDIANS OF ADEQUATE REPRESENTATION

Failure of the United States to protect Indian rights to the use of water to which the California Indians are entitled has defeated all hope of economic development of some Reservations. Economic development—Indian or non-Indian—in Southern California is geared to the availability of water to a degree unsurpassed on this Continent. It explains the devastation brought to the Mission Indians—the La-Jollas, Rincons, Palas. Their rights have been seized without compensation. Their efforts to defend themselves have been defeated. Others, unless the seizure of these rights is prevented, will experience the same grave damage. So widespread, so all-encompassing is this failure of the Nation to fulfill its obligations to the Indians it is impossible to chronicle here the magnitude of the damage done to them, particularly those Indians in Southern California.

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[171] See memorandum dated October 13, 1965, entitled *Winters Doctrine Rights in the Missouri River Basin*. Also memorandum dated December 5, 1967, entitled *Analysis of Opinion November 16, 1967*, to the extent that it relates to the rights of the Crow Indians in the Bighorn River.

Shaken by this failure of the Nation to fulfill its obligations, the California Indian Legal Services has become actively engaged and is rendering legal assistance to the Indians. There are conflicts within the federal establishment which have caused it to fail these Indians in a most serious way. Recently a brief in opposition to the claims of certain of the Mission Indians and others demonstrates the impossibility of Justice Department to protect adequately Indian rights to the use of water. In that brief there is a failure fully to cite an authority repeatedly relied upon; fully to review the results of the litigation giving rise to the decision relied upon, or correctly to interpret the decision in its present status in view of decisions not cited by Justice.[172]

That effort to sustain a proposition which, if successful, would defeat a claim of the Indians for compensation is diametrically opposed to the position taken by Justice in support of Indian claims.[173] Indeed, the brief referred to above applies principles seeking to defeat the Indian claims, which have not been applied against non-Indians seeking restitution for the alleged taking of rights to the use of water.[174] This matter and related disparities in regard to conflicts within Justice and Interior is the subject of present intensive investigation. California's Indians are aroused over the loss of their rights due to the conflicts in question and are greatly in need of legal assistance if they are to avoid further seizure of their rights.

VI. Economic Development Gravely Retarded by Purported Seizure of Indian Land and Rights to the Use of Water on Other Indian Reservations

(i) *Flathead Indian Reservation:*

Magnitude of disasters inflicted upon the Salish and Kootenai Tribes by the opening of the Flathead Indian Reservation to non-Indians and later to other developments, has never been determined. That opening took place in the early 1900's. There has been a continuous disregard of the Indian rights, a claim by the Solicitor that all of those Flathead rights had been preempted by the United States for the largely non-Indian project, and a failure to take cognizance of priority accorded to Indian rights in the administration of the irrigation project.[175]

Every effort to institute an action to protect or have determined the rights of the Salish and Kootenai Tribes has been denied by the Solicitor's Office. A full investigation of the matter is now under way to the end that those rights will be inventoried and, it is hoped, in some manner protected against further encroachment by the non-Indians permitted to occupy the Fathead Indian Reservation.

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[172] See brief filed August 1968 before the Indian Claims Commission, Docket No. 80-A, Baron Long (El Capitan), Campo, Inaja, *La Jolla, et al.*, v. *United States of America*, defendant; Defendants requested findings of fact, objections to petitioners' proposed findings of fact, and brief, pages 28, 29.

[173] This is not new—see memorandum dated June 19, 1956, captioned *Water Rights on Indian Reservations* (filed under *Gila River Pima-Maricopa Indian Community, et al.*, v. *United States*, Docket No. 236, before Indian Claims Commission).

[174] In effect the brief before the Indian Claims Commission declares that the Indians are not entitled to compensation without a general adjudication. That position is, of course, wholly incorrect—see *United States* v. *Gerlach Live Stock Co.*, 339 U.S. 725 (1949).

[175] See memorandum prepared at request of Solicitor dated April 28, 1967, "*Memorandum* relative to the titles to rights to the use of water and the authority to control and administer them on the Flathead Indian Reservation."

(ii) *Gila River Indian Reservation—Pima Maricopa Community; economic development greatly impeded by attempted seizure of immemorial rights of Indians in the Gila River:*

The San Carlos Indian Irrigation Project was undertaken[176] purportedly for the benefit of the Pima Indians who had from time immemorial irrigated their lands. What occurred has been a violation of the nation's trust responsibility to the Indians—an attempted illegal seizure of most of the rights of the Indians. Moreover, the broad *Winters Doctrine Rights* for future development of the Indian Reservation have been systematically denied.

It is infrequent that a court decree—here with the consent of Justice and Interior—sets forth a violation of the Indians' *Winters Doctrine Rights.*[177] In the cited paragraphs of the decree and elsewhere in it the prior immemorial rights of the Indians are recognized and then are specifically subordinated to the junior rights.

This course of conduct, among others, in connection with the project in question reflects innumerable violations of the surface and ground water rights of the Indians. A full investigation must be undertaken in regard to this outrageous circumstance. It will reveal the extent of the damage to economic development that the Indians have experienced.

AN ATTEMPT TO RECTIFY ANCIENT WRONGS IN REGARD TO INDIAN LANDS AND RIGHTS TO THE USE OF WATER

The Commissioner of Indian Affairs has authorized and directed a program, strenuously prosecuted to recover for the Indians, lands and water rights of which they are wrongfully deprived. Progress is being made. Yet the lack of legal assistance or outright opposition within the government and without has created grave problems in connection with the program. Should that program be stopped or retarded, the economic development of the American Indian Reservations may very well be precluded for all time because of the rapidity with which their lands and rights to the use of water are being eroded away by the failure properly to protect them.

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[176] See *A History of the Pima Indians and the San Carlos Irrigation Project*, Senate Document No. 11, 89th Congress, 1st Session.

[177] See Decree entered June 29, 1935, Globe Equity No. 59, *The United States of America* v. *Gila Valley Irrigation District*, et al.

THE HEIRSHIP LAND PROBLEM AND ITS EFFECT ON THE INDIAN, THE TRIBE, AND EFFECTIVE UTILIZATION

By STEPHEN A. LANGONE*

FOREWORD

Joint land ownership by multiple heirs of the original owner creates a serious administrative burden for the Bureau of Indian Affairs, which holds this land in trust for the Indian owners, and, more importantly, prevents efficient economic use of much of this land. Ownership of the heirship lands has by now become so fractionalized that few of the present owners receive any significant income or other benefit from their lands. A substantial amount of land is not put to any use whatsoever due to the difficulties created by multiple ownership. Stephen Langone describes the history of this Indian land problem, showing how the present complicated situation was allowed to develop. He points out that unless prompt action is taken, the situation will grow increasingly complicated as the number of heirs continues to multiply. He then suggests a number of steps which could be taken to simplify the problem and reduce it to more manageable proportions. Among Langone's recommendations are limitations on future inheritance rights, a program of land consolidation and exchange, and the granting of full title in fee simple to individual landowners where the owner is competent to manage his own affairs and where removal from trust status would not be detrimental to effective utilization of surrounding lands.

Introduction

The "heirship," or as it is sometimes called "fractionated" Indian land problem is basically that tracts of Indian land are owned by more than one individual and the Federal Government holds title in trust for them. While the land originally was in the name of one Indian, upon his death, and the death of subsequent heirs, the probate action has been taken by the Federal Government and the land divided—on paper—among succeeding heirs. The resulting group ownership of a tract of land, along with restrictive Federal regulations, has denied the owners any opportunity for maximum utilization of the land or of its money value. There has also been a direct effect on actual and potential tribal land consolidation programs and on the Federal Government in terms of ever-increasing administrative overhead. Since the land held in the name of individual Indians constitutes almost one quarter of the total Indian land base it is obviously a problem of serious consequences.

To discuss the problem in terms of the situation "today" is not possible statistically, due to the complexity of the situation, and lack of recent statistics. However, the nature of the problem is such that until a solution is found the situation will continue to become worse rather than better. So, the lack of current statistics to rely on is not a serious handicap since the problem is surely greater than it is presented here. There are three major sources of information concerning the heirship problem that are available, though outdated, at this time. The three studies referred to are those by the Senate Interior and Insular Affairs Committee,[1] the House Interior and Insular Affairs Committee,[2] and a report by the Comptroller General.[3] Together the three represent the most comprehensive study of a specific Indian problem that has ever been undertaken. In this paper the author has leaned heavily on these studies for the background material presented.**

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What does land mean today to the American Indian? Land is the Indian past, present, and future. Whatever economic opportunities lie in the future for the American Indian tribes will be directly related to their land base, and for many individual Indians their own future is in their land. For those Indians who have moved, or intend, or hope, to move away from the reservation into the general society—or "mainstream" as the popular term goes—their land represents money value that they cannot see or spend although it does belong to them.

What is Indian land to the Federal Government? To the Federal Government Indian land represents the areas where Indians reside; where the Government has jurisdiction over an ethnic group; where the administrative problems are all encompassing and time consuming, where the complexities have reached a stage of almost complete hopelessness. Indian land is where tribes that might be able to improve their economic future cannot do so due to a land shortage. The land is there but owned by individual tribal members. Individuals—if all their land interests were consolidated—might have a sufficient area for self-support or a homestead, but because they have divided interests in scattered tracts of land they may not even have a place to live or raise a subsistence crop. The State may refuse welfare aid to an Indian because he owns land, yet he cannot sell, lease, or live on it, due to the fractionated ownership and consent required from all other coowners.

Heirship land is, to the writer, a keystone in the field of Indian affairs, a keystone that binds together and continues other related Indian problems. Probably no other area of the relationship between the individual Indian and the Federal Government presents such a breeding ground for antagonism, discouragement, hopelessness, and general despair as evidenced by the heirs who expressed their opinions in answer to the questionnaire of the House Interior Committee. As a high Government official testified before a congressional committee[4] the problem "is capable of becoming a monster that will consume the usefulness of the land and, in the long run, deprive the Indian owner of productive real estate."

To state the problem, in its depth and diversity, is the purpose of this paper. The fact has been kept in mind that any analysis of the

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** The author participated in both congressional studies.

[1] U.S. 86th Congress, second sess. Senate. Committee on Interior and Insular Affairs. *Indian Heirship Land Survey*. Committee print. Two parts. 1,183 pp. Dec. 1, 1960.

[2] U.S. 86th Congress, second sess. House. Committee on Interior and Insular Affairs. *Indian Heirship Land Study*. Committee print No. 27. 2 vols. (vol. 1, 555 pp.; vol. II, 1,010 pp.). Dec. 31, 1960.

[3] U.S. Comptroller General of the United States. Audit Report to the Congress of the United States. *Administration of Indian Lands by Bureau of Indian Affairs, Department of Interior*. January 1956. 53 pp.

[4] Commissioner of Indian Affairs Philleo Nash, testimony before the Senate Interior and Insular Affairs Committee on S. 2899 "A Bill Relating to the Indian Heirship Land Problem". 87th Congress, second sess. Hearings, part 2; April 2, 3, 1962. P. 207.

Indian heirship land program requires a constant awareness of the danger represented by getting too deeply involved in statistics. In this paper the author has attempted to skirt this pitfall, including only those statistics necessary to establish a general picture, and hitting the highlights as they have been established through the studies referred to.

THE GENERAL ALLOTMENT ACT[6]

Before getting into the legislative origins of heirship land it is useful to consider the historical attitude of the Indians toward real property as compared to the attitudes of the non-Indian. Within the Indian culture, land was owned by the tribe and held for the use of all tribal members as a group. This practice probably came about because most tribal cultures were primarily those of the hunter and one man could not go hungry waiting for a deer to set foot on his property. Although in some tribes there was a semblance of recognition—or we might say assignment—to individuals for a specific tract of land, the tribes usually held the land for common usage. On the other hand the non-Indian culture was one of the individual owning land marked by fences, walls, markers, and so forth, to show to all others that "this belongs to me." It might be said, however, that in both cultures land was and is the binding force within.

While the Indian and non-Indian cultures differed in their attitudes toward ownership of land by individuals there were certain areas of similarity in attitudes toward land in general. Both cultures were geared to the desire for more and more land and both cultures "took title by conquest." The history of both cultures is replete with battles over land with the vanquished moving away and the conquerors moving in. The legal title in many cases—throughout the history of both cultures—was the power to take and hold the land.

When the two cultures met, a process of treaty-making fortunately emerged that continued until the late 19th century. Usually such treaties, when referring to the remaining or new tracts of land given to the Indians, recognized title as resting in the tribe rather than the individual member. This approach came about through recognition of the Indian culture and attitudes toward land ownership along with the non-Indian's desire to obtain a "clear" title to protect him against claims of other non-Indians. There was also—as previously stated—the feeling that an Indian tribe was some sort of "sovereign body" (not clearly defined) and when two "sovereigns" negotiate for land title is not in the name of individuals.

One of the first departures from tribal title in a U.S. treaty was that with the Choctaw on November 16, 1805 (7 Stat.: 98). In article I there is a specific designation of land for two individuals with the Federal Government confirming title. In the year 1839 the Federal Government negotiated a treaty with the Brothertown Indians (5 Stat.: 349) in the Territory of Wisconsin and under the terms of that treaty the land was "partitioned and divided among the different individuals composing said tribe of Brothertown Indians, and may be held by them separately and severally in fee simple * * *". In this treaty, the word "allotted" was used for the first time, a word that in future years would signify a major change in U.S. Indian policy and a major change for the Indian culture. The allotment policy would provide—near the end of the century—the general basis for the "heirship land problem."

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[6] An excellent study entitled *History of the Allotment Policy* by D. S. Otis, appears in: *Readjustment of Indian Affairs*. Hearings before the Committee on Indian Affairs, House of Representatives, 73d Cong., second sess. on H.R. 7902. Pp. 428–489. LC E93 U66272.

During later years many treaties carried provisions for allotment of lands to individual Indians and it became more and more frequent to provide for division of tribal lands among the members of the tribe. The Commissioner of Indian Affairs' annual report for the year 1885 [6] contains a table of the allotment statistics up to September of that year. Included are over 12,000 allotments made through 88 separate treaties with Indian tribes. As allotment of land became more and more common, the stage was set for the General Allotment Act which would apply to all tribes.

The beginnings of consideration of a general allotment policy can be seen threading its way through various Government pronouncements years before the action was taken. In his report for 1870 Commissioner of Indian Affairs E. S. Parker, in referring to the Indians of Michigan, Wisconsin, Minnesota and Kansas stated:[7]

> Another indication of progress in this direction is that many [Indians] are asking for the survey of their reservation, where it is held in common, and for allotments in severalty, of tracts of 80 or more acres to each, and in some cases the work of surveying is being effected with this object in view. The policy of giving to every Indian a home that he can call his own is a wise one, as it induces a strong incentive to him to labor and make every effort in his power to better his condition. By the adoption, generally, of this plan on the part of the Government, the Indians would be more rapidly advanced in civilization than they would if the policy of allowing them to hold their land in common were continued.

Again in 1871 [8] Commissioner Parker spoke of allotting lands to individual Indians and said:

> The true policy of their preservation from utter extinction, before many years pass, it is generally admitted, is to prepare them as rapidly as possible to assume the relation of citizenship by granting them increased facilities for the education of the young; by habituating them to industrial pursuits, and by the incentive to labor incited by a sense of ownership in property, which an allotment of their lands in severalty would afford, and by the benign and elevating influences of Christian teachings.

A later Commissioner, Edward P. Smith,[9] came to the same general conclusion and pointed out that there were "certain difficulties which lie in the way of progress" for the Indian. In a discussion of the subject Commissioner Smith stated:

> A fundamental difference between barbarians and a civilized people is the difference between a herd and an individual. All barbarous customs tend to destroy individuality. Where everything is held in common, thrift and enterprise have no stimulus of reward, and thus individual progress is rendered very improbable, if not impossible. The starting—point of individualism for an Indian is the personal possession of his portion of the reservation. Give him a house within a tract of land, whose corner—stakes are plainly recognized by himself and his neighbors

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[6] U.S. Office of Indian Affairs. Annual Report of the Commissioner of Indian Affairs. 1885. Pp. 320-1. LC E93.U71.

[7] U.S. Bureau of Indian Affairs. Annual Report of the Commissioner of Indian Affairs. 1870. P. 9.

[8] U.S. Bureau of Indian Affairs, Annual Report of the Commissioner of Indian Affairs. 1871. P. 5.

[9] ——— 1873. P. 4.

> and let whatever can be produced out of this landed estate be considered property in his own name, and the first principle of industry and thrift is recognized. In order to [sic] this first step, the survey and allotment in severalty of the lands belonging to the Indians must be provided for by congressional legislation.

The general idea of allotting tribal lands to individual Indians ran through the minds of Government officials and interested private parties even to the point of *forcing such allotment*, as indicated by Commissioner J. Q. Smith in 1876,[10] when he stated rather forcefully:

> It is doubtful whether any high degree of civilization is possible without individual ownership of land. The records of the past and the experience of the present testify that the soil should be made secure to the individual by all the guarantees which law can devise, and that nothing less will induce men to put forth their best exertions. No general law exists which provides that Indians shall select allotments in severalty, and it seems to me a matter of great moment that provisions should be made not only permitting, but requiring, the head of each Indian family, to accept the allotment of a reasonable amount of land, to be the property of himself and his lawful heirs, in lieu of any interest in any common tribal possession. Such allotments should be inalienable for at least 20, perhaps 50 years, and if situated in a permanent Indian reservation, should be transferable only among Indians.
>
> I am not unaware that this proposition will meet with strenuous opposition from the Indian themselves. Like the whites, they have ambitious men, who will resist to the utmost of their power any change tending to reduce the authority which they have acquired by personal effort or by inheritance; but it is essential that these men and their claims should be pushed aside and that each individual should feel that his home is his own; that he owes no allegiance to any great man or to any faction; that he has a direct personal interest in the soil on which he lives, and that that interest will be faithfully protected for him and for his children by the Government.

Congress was considering the transfer the of Bureau of Indian Affairs to the War Department—during the year 1879—and appointed I joint committee to survey the subject and make recommendations. an the final report of that committee[11] the recommendation was made that "The Indian should have his land allotted and the permanent title thereto given, with the precaution provided that he is not despoiled of his rights; and in addition to this, a law should be enacted which will virtually prevent the Indians from selling or disposing of their lands and houses to sharp and designing persons for not less than 25 years." This same idea was expressed that year by Secretary of the Interior Schurz[12] when he listed as one of the objectives of the Interior Department: "To allot parcels of land to Indians in severalty and to give them individual title to their farms in fee, inalienable for a certain period, thus to foster the pride of individual ownership of property instead of their former dependence upon the tribe, with its territory held in common."

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[10] ——— 1876. P. IX.

[11] U.S. 45th Cong., third sess. H. Rept. No. 93. *Report of the Joint Committee Appointed to Consider the Expediency of Transferring the Indian Bureau to the War Department*, 1879, p. 18.

[12] U.S. Secretary of the Interior. Annual Report, 1879, p. 5. LC J 84 .A5.

From this stage on various bills were considered in the Congress. Suggestions for such a program came from different sources (both in and out of Government) and resulted in passage of the General Allotment Act of February 8, 1887 (24 Stat. 388). While there were differences of opinion at that time, as evidenced by the debates on the floor of Congress, the prevailing opinion was that by dividing up the tribal property and allotting parcels to individual Indians they would be on their way to becoming full-fledged members of this society.

A brief summary of the act [12a] follows:

> Section 1 of the act authorized the President to allot tribal lands in designated quantities to reservation Indians. See 25 U.S.C. 331. Section 2 provided that the Indian allottee shall, so far as practical, make their selections of land so as to embrace improvements already made. 25 U.S.C. 332. Section 3 provided that allotments should be made by agents, regular or special. 25 U.S.C. 333. Section 4 allowed "any Indian not residing upon a reservation, or for whose tribe no reservation has been provided" to secure an allotment upon the public domain. 25 U.S.C. 334.
>
> Section 5 sets forth a limitation on the alienability of land by preventing an Indian allottee from making a binding contract in respect to land which the United States holds for him as a trustee. It provided that title in trust to allotments should be held by the United States for twenty-five (25) years, or longer if the President deemed an extension desirable. During this trust period encumbrances or conveyances were to be void. In general, the laws of descent and partition in the State or Territory were to apply after patents had been executed and delivered. If any surplus lands remained after the allotments had been made, the Secretary was authorized to negotiate with the tribe for the purchase of such land by the United States, purchase money to be held in trust for the sole use of the Tribes to whom the reservation belonged but subject to appropriation by Congress for the education and civilization of such tribe or its members. This section also contained an important provision for the preference of Indians in employment in the Federal Government. 25 U.S.C. 348.
>
> Section 6 of the act set forth the nonpecuniary benefits which the Indians were to receive in view of the distribution of tribal property and termination of tribal existence. 25 U.S.C. 349.
>
> Section 7 of the legislation provided the basic law upon which water rights to allotments were measured. 25 U.S.C. 381.
>
> The remainder of the act contained sections which exempted from the allotment legislation various tribes of the Indian Territory, the reservations of the Seneca Nation in New York, and an Executive order reservation in the State of Nebraska, and which authorized appropriations for surveys. In addition, the act contained various saving clauses for the maintenance of then existing congressional and administrative powers.

Nearly 5½ million acres of land were allotted in severalty by the turn of the century with the allotment program reaching its peak during the first decade of the 20th century. While decreasing in scope, the allotment program was carried on until 1934 when the enactment of the Indian Reorganization Act (48 Stat: 984), in effect, put a stop to the allotment process. Through the period of allotment there had been a total of 246,569 made accounting for 40,848,172 acres. Although originally the Allotment Act provided for title to be held in trust for a period of 25 years there were extensions made from time to time continuing the trust period for millions of acres.

[12a] Library of Congress. Legislative Reference Service. American Law Division, *The General Allotment Act of 1887 and the Potential of Current Application*, June 21, 1966.

This is the general background of the Government policy to allot parcels of land to individual Indians with the idea in mind that the road to "civilization" for the Indian led through private rather than communal ownership of land. With such good intentions why are we now faced with such a problem as that of heirship land?

Since the General Allotment Act provided that title would be held in trust by the Federal Government for 25 years—and this period was continued by congressional and presidential action—the death of an Indian owning such a tract required that, as his estate, it be divided among his heirs. Obviously, since the title was held in trust—and the heirs were considered "incompetent" to handle their own affairs—there could be no physical partition but only a division of interests on paper. For the non-Indian the same situation would be met by sale of the land and a division of the proceeds or by physically dividing the land among the heirs, each parcel thereafter being a separate estate. But the Federal Government, in attempting to protect the Indian, brought about the Indian heirship land problem we are facing today. Through the 80-odd years since the General Allotment Act the same tract of land may have been divided several times—on paper—and the number of heirs to one tract of land, in many cases, exceeds 100. Consider also that when an Indian husband died the wife may have inherited part or all of his interests in addition to those of her mother and father, etc. On her death these "parts of parts" were further divided among her heirs with tremendous complication resulting in heirs owning many small interests in many scattered tracts of land. The problem has snowballed to the extent that it is overwhelming in its complexity today.

THE EMERGENCE OF HEIRSHIP LAND AS A PROBLEM

While there has been much written about the heirship problem and fractionated land, few accurate historical statistics are available. The problem itself was emphasized in 1935 by the National Resources Board [13] in a report that stated:

> A very large area of land now in Indian possession is practically sterilized by the complexities of title and ownership arising out of the inheritance process. Some 6 million acres are now comprised in inherited Indian estates, and a large portion of this area produces neither crops nor income for the Indian heirs. . . . Since the partitioning of relatively small parcels of land among numerous heirs and title to fractions of various sizes proved impracticable, and since the sale of these parcels to white bidders has ceased, leasing of the inherited lands became the practical necessity * * *. These leasing operations were enlarged, with in-

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[13] U.S. National Resources Board, Land Planning Committee, *Indian Land Tenure, Economic Status and Population Trends*, pt. X of the Supplementary Report of the Land Planning Committee to the National Resources Board, 1935, p. 3. LC HD 183 .N3 .A5.

> creasing complications, as larger areas of allotted land passed into the heirship status. As a result of these conditions, the Office of Indian Affairs has for 30 years been doing an enormous real estate business, selling and leasing the lands of its wards—*with the income from the operations constantly decreasing while the cost of the real estate transactions multiplied.* [*italic* ours].

The situation as seen at that time was of such extensive proportions that the general feeling was that action was long overdue. This was the condition in existence approximately 24 years ago.

Three years later, the Bureau of Indian Affairs held a conference on Indian land problems at Glacier Park, Mont.[14] Participants at the conference included John Collier, Commissioner of Indian Affairs, William Zimmerman, Jr., Assistant Commissioner, Felix Cohen, Assistant Solicitor of the Interior Department, and other high-level staff. In addition, the Attorney General sent one of his special assistants and the Department of Agriculture sent a representative. During this conference the heirship land problem was a primary consideration. Commissioner Collier, in his opening statement, referred to the beginnings of the problem—the General Allotment Act—and pointed out that at that time in our history "one finds, as he reads the literature and the annual reports of the seventies and eighties and the debates in Congress, substantially no contradiction of the doctrine that individual ownership in fee simple was the inevitable and only way." Commissioner Collier went on to point out just how serious a problem heirship land had become by citing specific facts, as follows:

> Sixty percent of the Agency [Sisseton] costs, or $30,000 a year goes to allotted land business, chiefly heirship. To keep the work reasonably current, overtime, year in and year out, is required, and vacations are rarely allowed.
>
> However, the picture is much more than this. The 40 percent of the Agency business *not* put on allotment adjustments is constructive effort defeated by the land situation.
>
> Due to this situation, the Indians have become just a band of wandering and bewildered gypsies.
>
> There is not a single factor at this Agency that is peculiar to it. We only represent a somewhat advanced point in the operation of money waste, administrative defeat, defeat of professional ambitions, demoralization of the Indians, and creeping paralysis of the whole system of Indian affairs.

Commissioner Collier also pointed out that "Before this administration, the hopelessness of the situation had been faced," and that his administration took over with the intention to give an allottee the choice of taking the land in fee or exchanging it for some equivalent value from the tribe. However, the idea "was completely destroyed by opposition that arose at once. Allotted Indians did not want it; to them it meant confiscation." Since that time, according to the Commissioner, "We have simply gone on and on, wondering from time to time what to do."

During the course of the conference many suggestions were made and discussions held concerning various actions that could be taken to solve the problem. The general feeling seemed to be that of all

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[14] *Resume of Proceedings; Conference on Indian Allotted and Heirship-Land Problem.* Aug. 14-17, 1938; Glacier Park, Mont., 57 p. Unpublished. In: Department of Interior Central Library files. File No. 38496.

Indian problems this one had such serious effect on the entire Indian program, and was increasing at such a rapid rate, that immediate action was necessary. Some of the suggestions made included: (1) Using the 1910 act that empowers the Secretary of the Interior to sell heirship lands which cannot be divided into economic units to "bring into line the unwilling minority, or those whose whereabouts are unknown," and transfer the land to the tribe for consolidation purposes under a deferred payment plan; (2) using the 1910 law to sell economically unfeasible units to Indians or Indian groups; (3) having the Indian heirs carry on their own administrative work concerned with leasing, and so forth, of fractionated land; (4) purchasing through the Government single ownership lands before they become fractionated; (5) applying a one-half or one-quarter Indian blood rule for inheritance purposes; (6) purchasing fractionated or single owner tracts with tribal moneys; (7) buying heirship lands with the downpayment being made with Federal funds and the balance paid from income; and (8) converting fractionated interests to an appropriate number of shares in a corporation which would handle leasing of the land.

One of the recommendations respecting Indian land policy was that "Indian land policy shall seek the most rapid possible reduction of uneconomic and nonproductive administrative expenditures, particularly in connection with the management of heirship lands." During the conference a committee had been instructed to consider changes in Indian probate procedures. The committee report points out that:

> Under existing law it is the duty of the Secretary of the Interior to determine the heirs of deceased Indians in accordance with the laws of succession of the respective States in which the lands are situated. Under this situation the allotted lands are fast passing into undivided fractional interests so small as to deprive them of all economic value, to the detriment of the Indian and the added and useless expense of management and administration by the Government. Your committee therefore presents the following suggestions and recommendations, to be made effective either by legislation or modification of existing regulations as may be determined feasible.

The recommendations made were (1) alienation would be restricted to the heirs at law or to a person who is a member of the tribe having jurisdiction over the land, or to a tribe; (2) heirs would be limited to lineal descendants, collateral heirs being excluded, with the land reverting to the tribe should there be no heirs; (3) a devise would be limited to an heir (as defined in the second recommendation) or to a member of the tribe, but no devise should be approved unless the land is an economic unit; (4) limit the inheritance rights of nonmember surviving spouse to a life use of a designated interest to be terminated upon remarriage; (5) surviving spouse would hold a life interest terminating on remarriage; (6) limit the right of inheritance when the individual already has an economic unit; (7) limit the right of inheritance when it would comprise less than an economic unit; and (8) limit inheritance to persons of one-half or more Indian blood.

The recommendations were considered by the full group and were acted on as follows: 1, 3, 4, 5, and 7 were agreed to. No. 2 was "agreed upon in principle." On No. 6, "It was agreed that this item should be given further consideration." No. 8 was "not approved."

Another recommendation, respecting Indian land policy, was agreed to as follows: "Indian land policy shall seek the most rapid possible reduction of uneconomic and nonproductive administrative expenditures, particularly in connection with the management of heirship lands." In his concluding statement Commissioner Collier pointed out that "we have been attacking here that part of the Indian problem which is the most fatally important part, and which has been regarded heretofore as hopeless. If we can get anywhere at all on it, we shall have made an advance." However the specific recommendations on inheritance were not put into effect and the problem continued.

In 1956 the Comptroller General issued an audit report[15] to the Congress concerning the administration of Indian lands by the Bureau of Indian Affairs. A section of that report was devoted to the difficulties experienced by the Indians and the Federal Government as a result of fractionated landownership. The comptroller emphasized the difference in settling fractionated landownership by Indians, as compared to non-Indians:

> Although there appears to be no clear authority in Federal statutes for the sale or partition of undivided owners, the right of any owner of an undivided interest in land to force a partition or sale of land not under Federal jurisdiction is well settled by the courts. In this connection, section 27 of the title, "Partition," volume 40 of the American Jurisprudence, states that "whenever persons interested in land as owners and cotenants cannot, by consent and agreement among themselves, a division thereof, that is, have a voluntary partition by judicial proceedings—a compulsory partition—which takes place without regard to the wishes of one or more of the owners." Section 83 of the same title states that "the manifest hardship arising from the division of property of an impartable nature has been almost universally avoided by statutory provisions which give to a person entitled to partition the right to have the premises sold, if they are so situated that partition cannot be made. . . .

Some of the factors pointed out as creating the continuing complication of the heirship problem were that Indian heirs usually do not have cash or credit to settle estates when they cannot be physically partitioned; the responsibility and cost of administration of their land is handled by the Federal Government so there is no incentive for the heir to take any action to simplify the problem; and that Indian family relations are more complicated than those of non-Indians although in some States marriage and divorce follow State law.

ACREAGES INVOLVED

Prior to writing this paper the Bureau of Indian Affairs was contacted to determine if there were, at this time, up-to-date statistics on heirship lands. It seems, however, that the most accurate and comprehensive information available is still the analysis and report made by the Senate Interior Committee in 1960.

The only additional information available that would be of any value to this paper were the following:

Comparison of gain of loss—Tribal and Individually Owned Lands,[16] (compared to the figures of 1967)

Tribal	39, 585, 518. 37	+153, 625. 23
Individual	10, 893, 635. 19	—125, 579. 57

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[15] See footnote 3.

[16] Department of the Interior. Bureau of Indian Affairs, dated Feb. 27, 1969.

The following statistical breakdown of ownership statistics is dated September 27, 1965, and included only to indicate the multiplication of the problem. These figures are for 52 reservations and the memo[17] pointed out that:

> It is interesting to note that the number of single ownerships in the 1952 report is 52½ percent of the total, while the attached figures are now down to 39¾ percent. Further the percentages for the 2–5 owner group of tracts has increased from 27 percent to 31 percent, and the balance, (being those tracts with 6 or more owners) has increased from 20½ percent to 29¼ percent.

Area	Number of reservations	Total tracts	Single owner	2 to 5 owners	6 to 10 owners	11 or more owners
Gallup	2	346	244	30	31	41
California	4	342	256	70	11	5
Anadarko	2	3,443	1,321	1,044	457	621
Aberdeen	3	11,043	4,753	2,862	1,338	2,090
Portland	28	18,162	7,255	4,958	2,467	3,482
Phoenix	2	5,835	2,030	1,683	936	1,186
Billings	11	22,607	8,580	8,530	2,256	3,241
Total	52	61,778	24,439	19,177	7,496	10,666

While the statistics in the Senate report are admittedly 10 years old they still reflect the extent of the problem since Indian land has—in the ensuing years—moved into and out of heirship status. During the period studied by the committee there were 6,466,548 acres of land in heirship and 6,449,327 acres still in single ownership.

From the beginning of allotment through the year 1959 there had been a total of 241,972 allotments made covering a total acreage of 23,951,550. Of this number, 76,721 allotments representing a total of 12,915,875 acres remained in individual ownership. The Bureau of Indian Affairs has administrative subdivisions in the field called area offices, with specific geographic responsibilities. The following table presents the overall picture with a breakdown by area office.

*TABLE 3.—INDIVIDUAL ALLOTMENTS (BY NUMBER AND ACREAGE) STILL IN TRUST STATUS, TOTAL, ALL AREAS

Area Office	All allotments[1]		Allotments in heirship status	
	Number	Acreage	Number	Acreage
Aberdeen	22,128	4,405,020	11,898	2,457,376
Anadarko	7,951	972,388	3,963	432,335
Billings	14,567	3,921,604	6,860	1,699,903
Gallup	5,033	791,693	2,143	340,380
Minneapolis	2,573	169,816	1,855	130,784
Muskegee	259	855,712	[2] 192	337,236
Phoenix	9,849	326,384	5,803	222,115
Portland	12,444	1,409,549	7,085	809,641
Sacramento	1,917	63,709	988	36,778
Total	76,721	12,915,875	40,787	[3] 6,466,548

[1] Now in trust.
[2] Five Civilized Tribes is not included under "number" but is under "acreage." See table on p. 863 for explanation.
[3] See table on p. 866 for a more firm figure.
*The tables in this report, unless otherwise noted, are taken from the Senate Interior and Insular Affairs Committee study, Indian Heirship Land Survey of the 86th Cong., 1st sess.

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[17] Department of the Interior. Bureau of Indian Affairs. Memo to Chief Title Examiner, Land Records Improvement Program on Ownership Statistics, dated Sept. 27, 1965.

It must be kept in mind that although these statistics were collected directly from the Indian agencies involved they can only be considered as "fairly accurate" since, for example, many of the subtotals add up to less than the totals provided by the same agency and in one case the officer in charge reported that he did not know how many acres were in allotted status.

To place these statistics into a more understandable form, insofar as specific reservations are concerned, and to show how general and widespread a problem this is, the following compilation indicated the heirship problem in relation to the specific reservations involved.

INDIAN HEIRSHIP LAND SURVEY

TABLE 7.—*Total acreage of Indian land in "heirship status," total, all areas*

Area office	*Acreage*
Aberdeen	2, 286, 736
Anadarko	432, 335
Billings	1, 688, 902
Gallup	309, 236
Minneapolis	130, 784
Muskogee	329, 148
Phoenix	222, 115
Portland	786, 719
Sacramento	36, 779
Total	6, 222, 754

TABLE 8.—*Total acreage of Indian land in "heirship status," by areas*

Agency	*Acreage in heirship status*
Aberdeen area:	
Cheyenne River	96, 160
Fort Berthold	187, 423
Pierre	101, 157
Pine Ridge	[1] 849, 714
Rosebud	405, 607
Sisseton	91, 025
Standing Rock	449, 480
Turtle Mountain	53, 015
Winnebago	[2] 53, 155
Total	2, 286, 736
Anadarko area:	
Cheyenne-Arapaho	84, 943
Kiowa	193, 090
Osage	44, 852
Pawnee	52, 686
Potawatomi	18, 711
Shawnee	38, 053
Total	432, 335

[1] Total acreage in heirship status at Pine Ridge agency was given as 1,020,314. However, by adding that acreage owned by two to five heirs with the acreage owned by six or more, the total arrived at was 849,714, a difference of 170,600. Further study established that 170,600 acres of Indian land is owned by individual Indians (other than original allottee) and therefore should not have been included.

[2] Total acreage in heirship status at Winnebago agency was given as 52,835. However by adding acreage owned by two to five heirs with the acreage owned by six or more, the total arrived at was 53,155. No explanation was found for this and the 53,155 figure seemed more firm so it is used in this tabulation.

TABLE S—*Total acreage of Indian land in "heirship status," by areas—Continued*

Agency	*Acreage in heirship status*
Billings area:	
Blackfeet	449, 364
Crow	[3] 546, 667
Flathead	[4] 36, 473
Fort Belknap	148, 864
Fort Peck	295, 902
Northern Cheyenne	120, 624
Wind River	91, 008
Total	1, 688, 902
Gallup area:	
Consolidated Ute	7, 920
Jicarilla	322
Navajo	[5] 276, 080
United Pueblo	11, 174
Zuni	13, 740
Total	309, 236
Minneapolis area:	
Great Lakes	80, 148
Minnesota	50, 636
Total	130, 784
Muskogee area:	
Five Civilized Tribes	[6] 318, 000
Quapaw	[7] 11, 148
Total	320, 148
Phoenix area:	
Colorado River	8, 717
Nevada	64, 148
Papago	33, 116
Pima	69, 969
San Carlos	960
Umtah and Ouray	45, 205
Total	222, 115

[3] Total acreage in heirship status at Crow agency was given as 554,667. However by adding that acreage owned by two to five heirs to that owned by six or more, the total arrived at was 546,667, a difference of 8,000 acres. No explanation was found for this and the 546,667 figure seemed more solid so it is used in this tabulation.

[4] Total acreage in heirship status at Flathead agency was given as 39,474. However by adding that acreage owned by two to five heirs to that owned by six or more, the total arrived at was 36,473, a difference of 3,001 sites No explanation was found for this and the 36,473 figure seemed more solid so it is used in this tabulation.

[5] Total acreage in heirship status at Navajo agency was given as 307,224. However by adding that acreage owned by two to five heirs to that owned by six or more, the total arrived at was 276,080, a difference of 31,144 acres. A check of the return reveals that the 31,144 acres in question are owned by individual Indians (not original allottees) and therefore should not have been included.

[6] The report from the Five Civilized Tribes Agency states that the total acreage in heirship land is "unknown" and no estimate is given. However, a report from the same agency to this committee in 1958 printed in "Land Transactions,"(p. 482) gives 318,000 acres as being in heirship status at that time. Since an entry for this agency would throw off the statistics completely, we are using the 1958 figure which should (bring us closer to an accurate total.

[7] Refers only to Quapaw Tribe.

TABLE S.—*Total acreage of Indian land in "heirship status," by areas*—*Continued*

Agency	*Acreage in heirship status*
Portland area:	
Colville	143, 155
Fort Hall	157, 047
Northern Idaho	91, 572
Warm Springs	[8] 70, 643
Western Washington	[9] 118, 462
Yakima	205, 840
Total	786, 719
Sacramento area:	
California	20, 456
Hoopa	10, 204
Riverside	6, 119
Total	36, 779

[8] In the return from Warm Springs, 5-percent estimates were given in answer to the question dividing ownership of heirship land into two categories (two to five owners and six or more), therefore they could not be checked against this figure.

[9] Total acreage in heirship status of Western Washington Agency was given as 93,565. However, by adding that acreage owned by two to five heirs to that owned by six or more, the total arrived at was only 70,643, a difference of 22,922 acres. No explanation was found for this and the 70,643 figure seemed more solid, so it is used in this tabulation.

CLASSIFICATION, VALUE, USE, AND NONUSE OF HEIRSHIP LANDS

Is the Federal Government simply acting as a land corporation, and handling the management of Indian lands by leasing to non-Indians? An understanding of the type of land—irrigated, dry farm, grazing, forest, its value, and the extent of use by Indians and non-Indians, is necessary to an overall understanding of the problem. This type of information was obtained directly from the reservation superintendents and compiled on a total basis for all returns.

TABLE 12.—INDIAN HEIRSHIP LAND, TOTAL, ALL AREAS (BY USE CLASSIFICATION AND VALUE)

Classification	Used by Indians (acres)	Used by non-Indians (acres)	Not used (acres)	Total [1] (acres)	Value per acre	Total value
Irrigated	34, 157	107, 512	69, 675	211, 344	$220. 62	$34, 658, 988. 04
Dry farm	79, 187	725, 044	60, 208	869, 037	119. 58	46, 271, 605. 00
Grazing	1, 688, 461	2, 548, 385	150, 245	4, 381, 109	20. 47	74, 235, 081. 94
Forest	210, 922	111, 067	127, 871	405, 312	42. 48	20, 261, 626. 27
Other	40, 994	137, 844	133, 306	309, 225	587. 66	3, 955, 332. 02
Total	2, 053, 721	3, 629, 852	541, 305	6, 176, 027	198. 16	179, 382, 636. 00

[1] This total does not agree necessarily with a total for the 1st 3 columns. In some agencies this was brought to our attention when they explained that some tracts are partly one type of land and partly another, e.g., forestry and grazing.

TABLE 13.—INDIAN HEIRSHIP LAND, BY AREA (BY USE CLASSIFICATION AND VALUE)

ABERDEEN AREA OFFICE

Classification	Used by Indians (acres)	Used by non-Indians (acres)	Not used (acres)	Total (acres)	Average value per acre [1]	Total estimated value
Irrigated	None	None	None	None	None	None
Dry farm	19, 244	282, 432	9, 710	311, 389	$15. 63	$17, 696, 618. 96
Grazing	741, 942	1, 571, 007	20, 135	2, 332, 095	20. 07	43, 160, 772. 31
Forest	182, 244	640	14, 430	197, 314	18. 33	[3] 4, 783, 093. 24
Other	36, 513	4, 028	15, 465	56, 066	(3 4)	(3)
Total	979, 943	1, 858, 107	59, 740	2, 896, 894	....	65, 640, 484. 51

See footnotes at end of table, p. 534.

TABLE 13.—INDIAN HEIRSHIP LAND, BY AREA (BY USE CLASSIFICATION AND VALUE)—Continued

Classification	Used by Indians (acres)	Used by non-Indians (acres)	Not used (acres)	Total (acres)	Average value per acre [1]	Total estimated value
ANADARKO AREA OFFICE						
Irrigated	125	1,220	None	1,345	[6] $262.00	$150,650.00
Dry farm	17,450	214,617	9,582	241,24[illegible]	99.84	[7] 2,000,652.38
Grazing	15,202	187,824	2,214	205,24[illegible]	38.48	7,625,725.54
Forest	None	None	None	None	None	None
Other	None	2	None	2	None	None
Total	32,777	403,661	11,796	447,830		9,777,027.92
BILLINGS AREA OFFICE						
Irrigated	12,900	27,702	12,950	53,730	$68.14	[8] $3,805,890.50
Dry farm	20,190	108,781	35,938	169,918	42.50	[9] 8,080,927.00
Grazing	355,829	500,085	89,132	938,047	12.60	[10] 11,632,481.00
Forest	None	320	None	329	([5] [11])	([5])
Other	None	970	746	970	([5] [11])	([5])
Total	387,018	637,957	138,766	1,162,904		23,490,298.50
GALLUP AREA OFFICE						
Irrigated	1,793	360	400	2,553	$80.00	$204,240.00
Dry farm	400		40	440	10.16	[13] 5,125.00
Grazing	327,646		1,344	328,900	3.82	[14] 1,163,248.50
Forest	8,265	29		8,394	23.00	[15] 185,365.00
Other		112,788		112,788	None	[16] None
Total	338,204	113,177	1,784	453,165		1,557,968.50
MINNEAPOLIS AREA OFFICE						
Irrigated				None		
Dry farm	130	450	325	905	$200.00	[17] $181,000
Grazing						
Forest	160	1,600	100,943	[18] 102,893	[19] 2.50	257,232
Other	3,052	84	2,150	5,286	([5] [20])	
Total	3,342	2,050	103,418	109,084		438,232
MUSKOGEE AREA OFFICE [21]						
Irrigated						
Dry farm	1,396	4,993		6,389	$27.00	$199,145.00
Grazing	1,310	3,526		4,837	11.20	66,785.00
Forest				None		
Other			158	158	[22] 5.00	790.00
Total	2,706	8,519	158	11,384		266,720.00
PHOENIX AREA OFFICE						
Irrigated	12,888	24,578	43,510	80,978	$225.00	[23] $13,124,300.00
Dry farm		151		151	None	([24])
Grazing	48,620	51,893	5,721	106,234	30.33	[25] 5,291,786.00
Forest				None		
Other		6,935		6,935	250.00	[26] 1,733,700.00
Total	61,508	83,557	49,231	104,298		21,149,800.00
PORTLAND AREA OFFICE						
Irrigated	6,281	53,542	12,685	72,508	$188.62	[27] $17,258,857.00
Dry farm	20,368	113,034	3,614	137,020	83.58	[28] 17,724,337.00
Grazing	199,164	224,505	17,865	441,534	8.85	[29] 3,859,040.25
Forest	20,153	108,469	12,498	96,382	126.12	[30] 15,035,256.00
Other	136	12,689	112,641	126,166	458.00	[31] 229,150.00
Total	246,102	512,239	159,303	873,010		54,107,330.75

See footnotes at end of table, p. 534.

TABLE 13.—INDIAN HEIRSHIP LAND, BY AREA (BY USE CLASSIFICATION AND VALUE)—Continued

SACRAMENTO AREA OFFICE

Classification	Used by Indians (acres)	Used by non-Indians (acres)	Not used (acres)	Total (acres)	Average value per acre [1]	Total estimated value
Irrigated	80	20	130	230	$500.00	$115,000.00
Dry farm		586	999	1,584	242.00	403,800.00
Grazing	748	9,545	13,834	24,128	20.40	435,213.04
Forest				None		
Other	1,293	358	2,146	924	1,055.00	1,725,712.00
Total	2,121	10,509	17,109	26,866		1,679,755.00

[1] This is an average of values for the entire area and no weight has been given to the number of acres valued at each figure. The total value column however represents acres at each agency multiplied times value for those specific acres; Where the returns did not state a value, the average for the area was used.

[2] At Turtle Mountain Agency there were 8,028 acres of forest land listed but no value per acre was given. The average value figure ($18.33) was, therefore, used to compute total value for that agency of forest land.

[3] "Other" land includes wastelands, coulees, etc., and, therefore, a value per acre is difficult to set.

[4] Not applicable.

[5] Unknown.

[6] Kiowa area field office divided irrigated land into 2 categories, bottom land and upland. Bottom land value was given as between $300 and $400 while upland value was given as between $120 and $200. In addition, the only other agency in the area reporting irrigated land (Cheyenne and Arapahoe) answered the question concerning value by entering "none." We have split the difference between the low and high figures given at Kiowa and consequently used $262 as an average value.

[7] At Kiowa area field office dry farm is divided into upland and bottom land and categories with ranges from $50 to $130 for upland and $150 to $250 for bottom land. We have used $145 as an average to compute the value.

[8] Flathead Agency reported a range of $75 to $100 and Fort Belknap $35 to $70. For Flathead a figure of $87 was used and for Fort Belknap $52.50 was used.

[9] Flathead Agency reported a range of $25 to $40 and Fort Belknap $35 to $40. For Flathead $32.50 was used and for Fort Belknap $37.50 was used.

[10] Crow reported a $12 to $25 range, Flathead $12.50 to $15, Fort Belknap $6 to $10. For Crow $18.50 was used, for Flathead $13.75 and for Fort Belknap $8.

[11] This land is on Crow Agency but instead of giving a value per acre the return simply stated "timber only, $10 per thousand board feet measure".

[12] This land includes roadways, ditches, homesites, etc., and no value per acre is given.

[13] Zuni dry farm land ranged from $7 to $10 per acre, we therefore used the figure of $8.50.

[14] Consolidated Ute was valued from $1 to $5, Navajo from $3 to $4, Zuni from $3 to $5 and Ramah Navajo from $3 to $4. We have used $2 for Consolidated Ute (based on the number of acres valued at $1 and the number valued at $5), $3.50 for Navajo, $4 for Zuni and $3.50 for Ramah Navajo.

[15] Navajo forest land was valued at from $10 to $50 per acre, we used $30 as a median.

[16] No value was given for this land (it was all at Navajo) but the return stated it was under oil and gas lease.

[17] Minnesota Agency did not state a value per acre for dry farm land so the Great Lakes value ($200) was used.

[18] There is 200 acres difference between the total acres and the acres by category for Great Lakes Agency.

[19] No figure was given for Great Lakes Agency and the Minnesota Agency listed $2.50 plus timber. Therefore the $2.50 figure was used for both with the understanding it did not include timber.

[20] This land is recreational, lake frontage and homesites. Great Lakes return stated the lake frontage value was $4 a foot but this could not be used to estimate total value.

[21] The Five Civilized Tribes Agency return did not list the total acreage in heirship status or the value. There are somewhere in the neighborhood of 318,000 acres of heirship land in that jurisdiction that are not included in this list.

[22] This is described as rocky, hilly, etc.

[23] Fallon and Walker River Reservations did not list an acreage value so the average was used.

[24] No value was listed for dry farm.

[25] Carson City and Pima did not estimate value of grazing land so the average value was used.

[26] This land was described as "nonproject irrigated."

[27] Fort Hall value ranged from $125 to $300 ($212.00 was used). Warm Springs ranged from $40 to $75 ($57.50 was used).

[28] Fort Hall ranged from $35 to $80 ($57.50 was used). Warm Springs ranged from $18 to $30 ($24 was used).

[29] Fort Hall ranged from $7.50 to $15 ($10 75 was used). Warm Springs ranged from $6 to $10 ($8 was used).

[30] In the Yakima return a certain number of acres (forest) had been included in grazing lands. We have placed them in their proper category and based the value on estimates for forest land. Western Washington did not include the value of standing timber. Fort Hall ranged from $65 to $100, we used $82.50.

[31] These land values ranged from $50 to $1,000 with 2 agencies not answering the question. It was therefore not considered feasible to use the average value to compute the value of 125,061 acres not included. Use of these lands ranged from business leases to sand and gravel.

TABLE 14.—AMOUNT OF HEIRSHIP LAND NOT BEING USED FOR INCOME-PRODUCING PURPOSES AS A DIRECT RESULT OF ITS HEIRSHIP STATUS, AREAS COMPARED

Area office jurisdiction	Number tracts	Number of acres
Aberdeen	503	77,684
Anadarko	88	7,288
Billings	488	54,661
Gallup	12	1,784
Minneapolis	1,156	72,700
Muskogee		
Phoenix	42	479
Portland	3,360	257,821
Sacramento	30	1,020
Total for all areas	5,679	473,437

TABLE 15.—AMOUNT OF HEIRSHIP LAND NOT BEING USED FOR INCOME-PRODUCING PURPOSES AS DIRECT RESULT OF ITS HEIRSHIP STATUS, BY AREA

PHOENIX AREA

Jurisdiction	Number of tracts	Number of acres
Colorado river	None	None
Yuma subagency	20	200
Fort Apache	None	None
Hopi	None	None
Nevada	None	None
Papago	None	None
Pima	22	279
San Carlos	(1)	(1)
Uintah and Ouray	None None	None None
Area total	42	479

PORTLAND AREA

Jurisdiction	Number of tracts	Number of acres
Colville	None	None
Fort Hall	349	10,626
Northern Idaho	4	350
Warm Springs	400	50,000
Western Washington	2,579	192,865
Yakima	28	3,980
Area total	3,360	257,821

SACRAMENTO AREA

Jurisdiction	Number of tracts	Number of acres
California agency	(2)	(2)
Hoopa area field office	30	1,020
Riverside area field office	(1)	(1)
Area total	30	1,020
Grand total, all areas	5,679	473,437

[1] No statistics.
[2] No answer.
[3] [illegible]

TABLE 16.—USE OF HEIRSHIP LANDS

	Used by tribe (acres)		Used by heirs (not leased) (acres)		Used by other Indians (individuals) (acres)	
	Leased	Other arrangements[1]	As home	For income-producing purposes	Leased	Other arrangements[2]
Irrigated	None	None	8,081	16,423	11,736	
Dry farm	None	None	21,506	47,048	75,094	
Grazing	45,565	None	332,069	444,838	660,201	
Forest	None	None	17,735	19,835	20,678	
Other (specify)	None	None	4,709	1,741	4,238	
Total	45,565		384,100	529,000	771,857	

[1] The information in the table is the data analyzed by the committee staff.
[2] Explain whether "other arrangements" are with the permission of heirs and what type of arrangements they are. Also state whether these arrangements are made between the user and the heirs, tribe, or Bureau officials.

Table 12 reveals that more than half of the heirship land is used by non-Indians and that 541,305 acres are not used at all. The figures for acreage not used are important because such lands—if put into use—might yield an additional income to the Indian owners. Table 14 is a compilation indicating those tracts of land not being used for income producing purposes *as a direct result of its heirship status*. This land, 473,437 acres, could be producing sorely needed income or be used as homesteads, if the titles were not so confused.

The Senate committee study provides the best available information on the scope of the administrative problem imposed on the Federal Government by the heirship land problem. Questionnaires were circulated to all levels of administration from the central office of the Bureau of Indian Affairs down through the area offices, reservations, and tribal governing bodies. One of the problems faced was the "great difficulty in using the statistics presented by the field offices * * * in some cases the statistics were contradictory and in others either incomplete or omitted entirely." [18] There were conflicts found, for example, concerning the leasing of heirship land. A reservation superintendent pointed out to the committee that heirship land could not, under present regulations, be leased without the signatures of all heirs. The central office of the Bureau of Indian Affairs, however, stated that such land could be, and implied it was, leased without all signatures. This points up some of the confusion within the Bureau itself concerning this problem of multiple ownership. Some of the administrative problems pointed out were (1) an increase in the number of recordings required in maintaining official land records; (2) increase in the number of probate proceedings to be examined in determining current title status; (3) complicated computations of large common denominators have reached 54 trillion, billions are not uncommon and millions are commonplace; and (4) increased work involved in answering inquiries concerning family histories in connection with the ownership of undivided interests in land.

Many of the agencies reported a tremendous workload in leasing, selling, and preparing data for probate of estates. At the time of the study it was found that 112 employees (at a cost of $675 387) were devoting their entire time to the heirship problem and that it was estimated the Indians themselves were losing approximately $417,000 a year income, due to the fractionation problem making a total of well over a million dollars as the annual cost to the Federal Government and the individual Indian. This figure was qualified as minimal "due to the complexities of the subject and the other Government agencies involved" and that the Bureau of Indian Affairs had stated—in reporting on S. 311 (83d Congress)—"Thousands of such (heirship) allotments are subject to so many undivided interests that they cannot be effectively utilized by the Indian owners, and an enormous amount of Federal money is expended in the cumbersome mechanism required for the administration of these lands."

The findings of the committee are very important to any consideration of the subject matter since they are based on such an exhaustive and complete study of the problem.

> Heirship land is a major problem for our Indian population. Resulting ramifications create other problems of administration and use that are themselves approaching the point of becoming insoluble.
>
> (1) Approximately 6 million acres of land are now in heirship status and another 6 million acres will become heirship land in the near future unless prompt action is taken.

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[18] Senate report, p. X.

(2) The heirship problem is not only present in surface ownership of land but also in mineral ownership.

(3) Requiring all heirs to sign lease or sale papers is one of the foremost obstacles to the American Indian in utilizing his heirship land, and to the Federal Government in administering it.

(4) The heirs themselves have expressed an active interest in the problem as evidenced by the 38,871 requests for various actions made to Bureau of Indian Affairs officials during fiscal year 1958.

(5) Most local jurisdictions of the Bureau feel that present authority is inadequate to solve the problem and are almost unanimous in recommending corrective legislation.

(6) Some tribal councils have evidenced an interest in this problem as it relates to consolidation of the tribal land base.

(7) Continuing to hold allotted Indian lands in trust or restricted status without any consideration given to the individual's ability to manage his own land without supervision is serving to intensify the heirship problem.

The following case illustrates how complicated the problems of administration can be. One of the cases cited by the Comptroller concerned a tract of heirship land owned by 66 heirs and within 1 year—through death and probate—was owned by 90, an increase of 24 heirs. Another example given concerns a lease of 40 acres of heirship land where the annual rental income is $20 and the Federal Government must divide this among 75 heirs. "Only one of the 75 heirs receives more than $1 of the annual rental and 66 heirs receives a share of 25 cents or less which is entirely absorbed by the lessor fee charged to cover the cost of handling the collection. It is probable, that during the 5-year term of the lease, the distribution of the income may have to be recomputed, possibly each year, as a result of deaths among the present heirs which will further reduce the lease income to individual Indians from the land originally allotted." An example of the complications of probate actions to divide an estate was given for a specific allotment and probate action.

> The estate of allotment No. 144, valued at $240, had 71 heirs at time of probate. Forty-three heirs received more than a $1 share in the estate, and of the remaining 28 heirs, 14 received shares valued at less than 10 cents. The fractional shares ranged from 837/4,515,840 to 263,655/4,515,840.
>
> One Indian shared in nine estates through her second husband and also in two other estates. The total value of her share of these 11 estates was $703, with six of the estates being valued at less than $15. Her nine children and seven of her grandchildren shared in these estates at her death. Consequently, the interest in the 11 estates was divided into 176 shares ranging in amount from 3 cents to $30.

Each such probate case requires the Federal Government to compute the interest of each individual and their share of the probate costs. Such procedures usually result in man days spent to compute and collect moneys that amount to less than the cost of computation. The following is a worksheet of just such a computation.

	Pro rate share of fee	Total		Pro rate share of fee	Total
Number of heirs:			Number of heirs—Continued		
2	$0.02	$0.04	1	.25	.25
7	.05	.35	1	.31	.31
13	.08	1.04	2	.47	.94
3	.14	.42	3	.94	2.82
1	.20	.20	1	7.50	7.50
1	.21	.21			
4	.23	.92	39		15.00

In the words of the Comptroller General: "The worksheet for this distribution was prepared by three employees in 2 man-days. The cost of calculating the distribution was greater than the probate fee."

Some idea of the work required by the Bureau of Indian Affairs and the examiners of inheritance in the probate process are indicated by the following workload tables:

TABLE 21.—NUMBER OF HEIRSHIP CASES, EMPLOYEES, AND COSTS, BY FISCAL YEARS, BUREAU OF INDIAN AFFAIRS[1]

	Fiscal years						
	1953	1954	1955	1956	1957	1958	1970
On hand 1st of year	1,601	1,533	1,956	2,978	1,845	1,880	1,820
Forwarded during year	1,768	1,538	1,916	3,151	2,042	2,246	2,014
Pending at close of year	1,253	1,399	2,330	1,448	1,584	1,213	1,363
Employees responsible for compiling such information (number)	51	52	55	59	61	69	66
Total cost of handling heirship cases (estimate)[2]	$176,691	$189,685	$214,851	$249,536	$268,114	$311,237	$446,785
Total costs for such services connected with probate of cases[3]	58,414	59,439	73,678	88,124	99,154	109,166	136,044

[1] Basis for this estimate would be at present staff levels, and projected workload.

[2] This is for Bureau personnel only and includes leasing, distribution of income, salaries, etc. All phases of handling heirship lands (at this jurisdiction only) from date of heirship status to final settlement.

[3] This estimate is for actions directly concerned with settlement of heirship cases and does not include leasing, distribution of lease income, of any actions by other than BIA employees of this jurisdiction.

TABLE 34.—HEIRSHIP PROBATE CASES BY FISCAL YEARS HANDLED BY EXAMINERS OF INHERITANCE

	Fiscal years—						
	1953	1954	1955	1956	1957	1958	1970[1]
On hand, 1st of year	1,378	1,602	1,964	1,910	1,264	1,118	1,026
New cases received during year	742	599	944	1,210	1,560	1,356	1,353
Settled during year	519	763	970	1,966	1,758	1,303	1,519
Pending at close of year	1,602	1,649	1,634	1,167	1,118	1,198	889
Employees responsible for handling such cases	8	8	19	24	24	24	23
Total cost for handling heirship cases[2]	$47,801	$48,901	$101,801	$129,185	$137,920	$144,087	$146,882

[1] Basis for projection changes from 1953 to 1958. Statistics for 1970 would be estimated on the basis of keeping the workload current at that time.

[2] Through final settlement.

In attempting to sell their interests heirs run into other complications that compound the administrative work of the Government. On the Winnebago Reservation there was a request for sale of one allotment and for a period of 3 years the agency attempted to get the written consent to sell from all heirs. However, only 78 percent of the signatures were obtained. In this particular case the heirs of one decedent "a non-Indian who owned a 7/2016 interest in this estate, will probably never be determined." This man left no children and the Bureau found the relatives uninterested in the small amount involved.

Another case concerned an Indian who owned a half interest in 120 acres and because he had reached the age of 82 wanted the cash to use. "The application for sale was denied because one of the eight individuals having a one twenty-fourth interest in the land refused to consent to the sale. All the other owners had given their consent." These are just a few examples representing hundreds and thousands of such cases.

What Do We Know About the Heirs as People?

A general picture of the Indian heir was developed in the study of the heirship land problem by the House committee. The average heir is in the 41- to 50-year-of-age category; is a full blood; does not live on the reservation or on trust land; has an annual income between $1,000 and $2,000 (it is interesting to note here that there was a direct relationship shown between income and degree of Indian blood with the income increasing as the Indian blood quantum decreased, problably indicating a level of acculturation); and received from $50 to $100 a year from his fractionated land interests. More than half want all their heirship interests sold, 13 percent some sold, and 32 percent do not want any sold. Another interesting fact developed during the study was that many heirs owned other lands of their own in a fee simple status. The percentage of fee land ownership varies by area office with a high of 32.4 percent in Sacramento to a low of 10.4 percent in Phoenix (an average of 22.2 percent for all). Many of the heirs reported attempts to sell some of their heirship interests with varying degrees of success ranging from 69.8 percent in the Muskogee area to 27.7 percent at Gallup.

The occupation of the heirs is of interest. Are they skilled workers, unskilled, semiskilled, and so forth? In referring to the subject the committee report states that: "Among the heirs there are persons with occupations ranging from corporation president to college professor, to sheepherder and medicine man." A reading of the occupations is revealing. For example, the U.S. Government is retaining control of land interests and making the necessary decisions for three real estate brokers, licensed by their State to carry out real estate transactions for other citizens and to manage the property of other citizens in their State.

Interests in More Than One Heirship Tract

One facet of the Indian heirship land problem that must be kept in mind is that an heir is not necessarily heir to only one undivided interest but may well own undivided interests in several widely scattered tracts of land. Of those heirs surveyed it was established that 5,751 owned undivided interests in 19,856 tracts of land making the average number of undivided interests 3.4 per heir.

Welfare assistance was being received by 1,927 heirs, the majority of this group residing on reservations. The majority of heirs in the Aberdeen, Gallup, Minneapolis and Portland area offices reported receiving welfare assistance. Of those heirs living on their land interests (1,318), 357 ranch or farm the land. It is interesting to note that of those living on heirship land (1,318), 1072 are full bloods, and 401 of this number received welfare assistance. Remembering that annual income, as reported, relates directly to blood quantum, and comparing the figures concerning heirs residing on the land, it would seem reasonable to assume that neither the land nor income from it can provide an adequate living for the heirs, but only supplemental income.

OPINIONS OF THE HEIRS

The Indian heirs were given the opportunity, not only to answer specific questions, but to tell the Congress in their own words how they felt about the problem and what they would like to have done. The heirs indicated that such lands has caused bitter dissension in the family, hard feelings toward the tribe and the Federal Government, and a general feeling of hopelessness about the whole situation. Some of the most interesting and thought provoking statements on the subject came from the heirs themselves, providing a look at the problem from their point of view. In some cases the heirs did not know they had inherited any land interests and in others they had no idea where the land was, how much there was of it, or for that matter, anything else about it. In an effort to show some of the feelings and emotions involved, the following are direct quotes from the heirs themselves:

> "What little money I do get and what I don't—surely don't help me any. I pay the same taxes the white people pay, I would never move back to the reservation, so why should I want to own land on the reservation: I think I have invested my money wisely. Why can't I do the same with my share of the heirship lands?"

> "I know many people like myself who own shares in many pieces of land. This land is nearly impossible to do anything with, such as sale, or lease because of the amount of heirs involved.

> "I have received the amount of rental (72 cents) due to me which cost the Government more and more to cash the check."

> "I remember those heirship land I have interest in ever since I was a little boy, over 50 years ago, it seems the settlement of these lands were dragging along year after year even at that time. To tell the truth I have never entertained any thoughts of ever realizing anything from them."

> "The office [Bureau of Indian Affairs] leases my heirship land to people I don't want to have it even if I won't sign the lease and I want another person to have it."

> "Where is our land located? How much land do we have? How many heirs are there to this?"

> ". . . [I] was requested to sign a 'consent to sale' I signed and my share was 31/777600 and 31/129600 and 31/388800. I have received three big checks now—one for 4 cents, another for 2 cents and the last one was for 2 cents and 10 cents worth of postage stamps plus administration."

> "I only get $6.95 a year from inherited lands . . . I don't know where it is and no one else seems to know. I never sign a lease."

> "I have an undivided interest, 51030/10886400 in * * * 10 acres. There are quite a few heirs and I think it would be advisable to sell. I spoke to someone at the * * * Agency about it who informed me that there were too many heirs to contact in order to sell. As the years go on more heirs are added. I assure you my share of land is so small you probably could cover it with a postage stamp."

> "Yes. How did I acquire the above land? Of which nets me an income of $1.40 or $1.80 a year. Who on earth could make a living on 3,500/11,975,040 percent of 80 acres of Indian land? I would like to sell my cup of Indian soil."

> "My water charge on one tract was $9.00 and my lease money [income] was $4.60."

> "I am getting old and I am completely dependent on my lone living child, I feel that I am a burden to my child.—The land is no use to me—if I could sell it or lease it, it could help me to be independent for the rest of my life."

THE GENERAL SITUATION TODAY AND POSSIBILITIES OF SOLUTION

Approximately 24 percent (12 million acres) of the Indian land base (50 million acres) is owned by individual Indians. The acreage in individual ownership is about equally divided between single ownership and those tracts in heirship status already. A discussion of whether or not the General Allotment Act was a wise move on the part of the Federal Government would be of little value today. The fact is that the individual owner, the tribe, and the Federal Government are faced with a pressing problem of almost unimaginable complexity. It should be kept in mind that the heirship problem today is only half the problem it will be if the other 6 million acres, now in single ownership, move into the heirship category. So, complex as the problem is today, it may be worse in the future.

As has been stated there are tracts owned by more than 100 heirs and calculating the fractional interests requires using common denominators as high as trillionths. It is possible with computer technology to go on keeping track of these small interests but this would be a victory for the machines, not for the Indian people involved. Our goal should not be up-dated recordkeeping but up-dated economic assistance to the Indians and the tribes.

The question concerning the costs of management of many small interests and the necessity to obtain the consent of Indian owners bears heavily on the problem. A former Commissioner of Indian Affairs pointed out that the "signature" problem in leasing such tracts brings reduced rental income to the heirs.[19] One of the major factors that must be faced is that the problem—through inheritance alone—will increase in geometric proportions. The Examiners of Inheritance—who carry out probate actions—have indicated by rough estimates that the average number of heirs, in a probate case, is seven. Multiplying the present number of heirs (over 50,000) by seven gives a rough indication of the future fractionation of such interests.

At the heart of the Indian heirship land problem is the economic loss to the Indian, either through the loss of rentals, or the nonuse of land due to the complicated title. Actual income considered "lost" as a result of the fractionation problem amounted to $417,868 in 1958. This figure, although it may appear to be somewhat insignificant in the light of other expenditures today, may be a very real problem to the Indians involved. Considering the low income of heirs, as reported, any additional income would be of help to them. In addition to the loss of income there is another very significant problem when we consider that many heirs—if all their fractionated interests were combined—might well have a unit large enough for subsistence farming or for homesteading.

Of what actual value, to the heirs, are these fractionated land interests at this time. It has been established that the average annual income—from the land interests—is less than $100, certainly an amount insufficient to support a family, and that only 1,318 are reported as living on heirship land and only 357 ranch or farm the land. Many of the heirs have indicated a desire to sell and others have indicated an interest in consolidating their holdings.

The tribes on the other hand are concerned that heirship land, if removed from trust status, will—in some cases—be detrimental to present or planned tribal land consolidation programs and future income possibilities for the tribes. Where this is the case it is of understandable concern to the tribe and through the tribe, to the individual. Since an individual Indian is on the one hand an Indian owner and on the other, usually, a member of the tribe, he is affected in both ways.

The Federal Government, as represented by the Interior Department, would like to solve the problem not only to remove itself from the arena of an extremely difficult and emotional problem, but also to get back to the work at hand, namely, assisting the Indians—tribes and individuals—in becoming acculturated to the general society.

A beginning step, in terms of correcting the problem, is to attempt to find an area of general agreement among all parties concerned. This, of necessity, requires steering clear of the more emotional and controversial areas and the too technical approach that may bog the problem down.

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[19] 85th Cong., second sess. Senate *Indian Land Transactions*. Committee on Interior and Insular Affairs; Dec. 1, 1958.

The following are offered as possible general areas of agreement that could be used as a springboard into areas of effective action.

1. There is no easy simple solution to the problem.
2. No solution will meet with the complete approval of all parties concerned.
3. A solution to the problem cannot be reached without expenditure of money on the part of those concerned.
4. The problem, as it is now constituted, is unmanageable, increasing in scope, and requires solution.
5. Fractionation is an economic problem for the individual Indian owner, the tribe, and the Federal Government.
6. The Indian owners are of primary concern in any attempt to solve the problem, with the tribe being of secondary concern and the Federal Government, third.
7. The present administrative and personnel cost to the Federal Government could be more effectively used by other Indian assistance programs.
8. Possible remedies to reduce or solve the problem include: inheritance restrictions, exhange, sale, partition, escheat, and fee title.
9. Whatever approach is taken, reservation of minerals in trust, the holding of cash estates in trust, etc., will continue—to some extent—the fractionation, inheritance, and recordkeeping problem.

With these factors in mind we can go on to suggestions for possible solution of the problem. The suggestions that follow are related to: (1) inheritance of fractionated land interests; (2) administrative costs; (3) heirship land consolidation; (4) mineral rights; (5) fee title; (6) competency; and (7) key tracts.

(1) Inheritance of fractionated land interests should be limited to the surviving mate and then lineal descendants in joint tenancy.

One of the first steps that could be taken by the Federal Government to limit the expansion of the heirship land program would be legislation providing that inheritance of individual trust lands will be to the surviving mate—if any—and then by lineal descent in joint tenancy. Such legislation applied to both the 6 million acres of land now in heirship status and the 6 million still in single ownership would have several advantages. The two most important are: (*a*) the land will remain in the same family, and (*b*) there will be an initial probate when an owner passes away and no further probates until the last heir passes away. As a death occurs, among the heirs, the shares of remaining heirs would simply be recomputed, the land gradually returning to single ownership. At the death of the last remaining heir there would be a probate action and the cycle would begin again. As applied to the tracts now owned by one individual this approach would prevent such tracts from ever becoming as badly fractionated as those tracts now in heirship status. Such an approach could be taken regardless of any other overall legislative solutions since it would work to contain the problem indefinitely.

(2) The actual cost of administration should be charged to the heirs. When the administrative cost exceeds annual income from the interests the heir should be given the choice of paying the cost, forfeiting the income, or taking the cash value for the interest.

Should the heir decide to forfeit the income it could be used to buy out other small shares of heirship land on the reservation. If the heir chooses the cash value, the Federal Government could buy him out, allow any other heir to purchase that interest or divide it into the remaining interests. This approach would have various benefits, among them: (*a*) Allowing the heir to divest himself of uneconomic small interests; (*b*) allowing heirs to purchase other interests in a tract they might want to consolidate; (*c*) reimbursing the Federal Government for the cost of administration and the time involved, leaving that time or money for other more effective use; and (*d*) reducing the number of very small interests.

> (*3*) *An individual Indian land consolidation program could be established in conjunction with a tribal land consolidation program and used as the basis for an exchange program among heirs and among heirs and the tribe, providing opportunities to consolidate land holdings.*

In this day of computers it would seem possible to carry out an exchange program on a "one-shot" basis by setting aside an area as an "individual land consolidation area" and using this in conjunction with any tribal land consolidation program to exchange interests among heirs and the tribes resulting in a reasonable consolidation of interests for both.

The first step would be to contact all heirs to determine whether they wanted their fractionated interests consolidated or if they would rather have cash value for their interests. In such cases as minors, heirs that cannot be located, unprobated estates, and so forth, the Secretary of the Interior would act for the party. For each tract of land a simple majority of owners answering would be sufficient to place that tract in the exchange program. For those owners wanting to sell their interests the Government would purchase at fair market value. During this process of exchange the Government could trade with the tribe for areas that would help both in their consolidation efforts. Once the tribal and individual land trades were made the Government could then divide up the individual consolidation area and assign each heir one consolidated tract reflecting the total of his previous land interests. Of major consideration in such an action would be the heir living on a tract in which he owns an interest, since he should have his land consolidated in such a way that moving is not necessary.

The income from sale of interests owned by heirs that cannot be located would be held for a 5-year period and then—unless claimed—be turned over to the tribe for use in tribal land consolidation programs. The reasoning behind this approach is that some heirs haven't been heard from in over 20 years and disbursing the money back to the tribe is one means of benefiting all the Indians on the reservation. It is recognized that such a program is not simple in its application and that many problems will have to be worked out. However, combined with the recommendation on inheritance it could simplify the heirship land titles and consolidate the tracts into more reasonable units and result in more effective utilization in the future.

> (*4*) *Surface and mineral rights of individual Indian Trust Land should not be separated unless the owner reserves the mineral rights in fee simple.*

One of the findings of the Senate study was that "The heirship problem is not only present in surface ownership of land but also in mineral ownership." In the study published by the House the same problem was pointed out: "In some returns the heirs have requested the land be sold but that mineral rights be retained by them. If this were done (and the title held in trust) an equally difficult heirship minerals problem would doubtlessly arise."

With the retention of mineral rights in trust the problem continues, since at the death of each owner there must still be a probate to divide the mineral interests. And what is the probate situation? Back in 1958 the Gallup area director reported that "With the present staff of the examiner of Inheritance, some 15 to 20 years will be required to dispose of this backlog."

What is the affect of mineral reservations in trust on the recordkeeping problem of the Bureau of Indian Affairs? It would seem that whether the leases are for minerals or grazing, the problems of collection, disbursement, and recordkeeping are the same. We can recognize however, that many mineral reservations will not be leased and there would consequently be a decrease in recordkeeping. It would seem at this time though that unless any mineral reservations are taken in fee simple that the specter of another heirship problem will be haunting us. Another factor of great importance is that we could create a situation of *doubling the probates* since we could at one time be probating an estate for surface ownership of a tract and an entirely separate probate for mineral ownership of the same tract.

> *5. Any Indian who is sole owner of a tract of trust land can request title in fee simple and it will be issued if he is competent and if the land is not a "key tract" that—by removal from trust status—would be detrimental to the maximum utilization of other Indian land in the area.*

Any legislation, concerned with the solution of the heirship land problem, must come face to face with one of the most emotional areas in the subject field, individual Indians taking fee title to their tract of land. There are two major factors involved in consideration of this approach (a) when is an Indian "competent" to take title in fee; and (b) what is a "key tract."

The discussion on the subject of "competency" has gone on for years within the Federal Government and tribal structures without any specific right of the individual Indian to *declare himself competent*. As the Federal Agency with direct responsibility for Indians, the Bureau of Indian Affairs has defined competent as being a "synonym for capable" but then we are faced with a definition of "capable" as it applies to Indians. A few selections from the occupations of heirs—FBI agent, aeronautical engineer, analytical chemist, apartment houseowner, aquatic biologist, attorney, college professor, real estate broker, corporation president—indicates that many Indian heirs are more than competent or capable however we define the words. But must an Indian be a lawyer or real estate broker before we consider him capable of handling his own property? Obviously the answer is "No," so we must look for something more reasonable and yet not so loosely defined as to create a situation where Indians would lose their land without any benefit to them as opposed to an Indian that might sell his land and use the money constructively.

The Anadarko area officer some years back referred to competency of Indians as follows:

> There are many adult Indians today who own tax-exempt trust lands, both original allotments and heirship interests, who have had schooling at level equal to or above that of the national average, have adequate financial status and the proven ability to provide for themselves, are reasonably well adjusted in their respective communities or are capable of so becoming, and in general are on a par with other citizens of the community.

This officer of the Federal Government working directly with the Indians recommended that such Indians be issued a "certificate of capability" and full title in fee simple to all his property, real and personal.

The Secretary of Interior's task force stated that: "* * * the task force believes that eligibility for special Federal services should be withdrawn from Indians with substantial incomes and superior educational experience, who are as competent as most non-Indians to look after their own affairs." In discussing what the objectives of the Bureau of Indian Affairs should be the task force recommendations were along the lines followed by this recommendation:

> "1. Maximum Indian economic self-sufficiency
> "2. Full participation of Indians in American life
> "3. Equal citizenship privileges and responsibilities for Indians."

Taking all the factors into consideration a reasonable approach would be:

> *Any Indian with an educational background and annual income equal to, or exceeding, the average for all citizens of his State can declare himself competent.*

Such individuals making competency declaration and requesting title to their land should receive title within 90 days providing that the land concerned is not held to be a "key tract." A "key tract" is one that controls the water supply for the surrounding area, or a shipping point, access to other land, or in more general terms one that if removed from trust status—and thereby Federal Government control—would adversely affect other Indian trust lands. Where the land is considered as a "key tract" the Government could assist the individual in negotiating a sale to the tribe or another Indian, if his purpose was to sell. Otherwise the land would continue in trust status.

One of the problems to be avoided is that, without a specific definition, each agency might well interpret "key tract" differently. The writer encountered such a problem while analyzing material for a congressional study.[20] At that time a questionnaire had been circulated to agency officials and part II was devoted to the problem of "key tracts." In referring to the problem that sale of "key tracts" would have on other Indian lands, Commissioner Emmons stated:

> As for the effect which the fee patenting may have on other Indian lands, the Bureau's policy and position are quite clear. While the Bureau recognized the competent Indian's undeniable right to ask for and receive a fee patent, it also keeps in mind in continuing trust responsibilities to the tribal group and to

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[20] 85th Cong., second sess. Senate. *Indian Land Transactions.* Committee on Interior and Insular Affairs. Dec. 1, 1958.

> other Indian landowners whose holdings may be affected. Consequently, if there is any real possibility that *the disposal of a particular allotment might adversely affect other Indian lands in trust* [underlining ours] the Bureau will take the initiative in consulting with the Indians concerned and will give them every possible assistance in working out a satisfactory solution to the problem. In some cases this will involve purchase of the patented allotments by the tribal group, in other cases it will involve other various types of arrangements. The Bureau believes that all such problems can be fairly and equitably resolved in one way or another.

Examples of various interpretations by officials in the field are evidenced by the following statements concerning the existence of "key tracts" on the reservation:

> "The tribal council considers all land within the reservation as 'key lands.'
>
> "The * * * acreage was not recognized by Bureau officials as being key tracts * * * the sale of these tracts *has interfered* [underlining ours] with the best use of the tribal grazing land adjoining these tracts, which were excluded by fencing.
>
> "Two tracts of fee land have been purchased in connection with moving of homes * * * from a location that floods frequently due to melting snows, to a location where the flooding problem is eliminated.
>
> "There are several definitions of 'key tracts.'
>
> "It must be borne in mind that personalities and policy of succeeding council members differ with respect to criteria for 'key tracts.' "

It is obvious from the foregoing that a specific definition of "key tract" must be given to agency officials and possibly a procedure should be instituted for tribal and individual appeal whenever there is a difference of opinion concerning whether the land in question fits the definition of "key tract."

The recommendation above is an attempt to find a reasonable middle ground that provides an Indian individual—sole owner of a land tract in trust status—the right to take fee title if he so desires, and is capable, and in addition provide necessary protection for other Indians and the tribes when their holdings may be adversely affected by such action. In recommending that income and educational attainment be related to the average for the State, it was felt such a procedure would make it relatively easy for the Indian to prove he has reached that level and the Interior Department would not have to go through any involved process before issuing a fee title. As envisioned it would simply require the heir to show proof of his income and educational background which could then be compared to the latest information published by either the State or the Federal Government (Bureau of the Census). The tribe would then be notified by the agency with the agency declaring whether they considered the land as a "key tract." If the agency and the tribe decided it was not, the title in fee would be issued. Otherwise an appeal process to the Interior Department could be instituted, by any one of the three.

SUMMARY CONCLUSION

The writer has attempted to state the highlights of the problem without getting into too much detail and, as requested, come up with some recommendations for action that could be taken to solve the problem. It is realized that the recommendations made are not complete in all the necessary detail but they are presented as general approaches to the problem with the understanding that in actual application they would have to be broadened and detailed. Again credit is to be given to the Senate and House Interior Committee studies which are to date the most extensive collection of data available and on which the writer depended heavily.

FRAMEWORK FOR DECISION*

By Esther C. Wunnicke, Robert D. Arnold, and David M. Hickok

FOREWORD

The majority of Alaskan Natives—Eskimos, Indians, and Aleuts—currently live in extreme poverty. The nature of the settlement arrived at in the Alaskan land claims dispute will profoundly affect the economic future of these Native groups. In this excerpt from the Report of the Federal Field Committee for Development Planning in Alaska, Ester Wunnicke, Robert Arnold, and David Hickok describe the possible elements which might go into a land claims settlement and the economic consequences which different aspects of the settlement would have for the Native groups. The major types of settlement available are the grant of land titles, the provision of compensation, and the establishment of organizations to manage land and revenues. Among the crucial developmental factors will be insuring that compensatory payments are effectively put to use in economic development projects and that the management arrangements are of a type which will permit the Alaskan Natives to eventually assume full control over their own affairs.

Elements of the Problem

An examination of the elements of the Native land claims problem reveals the varying, and sometimes conflicting, objectives of the Nation, the State, and the Native people to be resolved in its solution.

THE NATIVE PEOPLE

About three-fourths of Alaska's 53,000 Eskimos, Indians, and Aleuts live in 178 predominantly Native communities, most of which are at locations remote from the road system of the State. The median size of these places is 155 persons. In these villages, the few, permanent, full-time jobs at highest rates of pay are typically held by non-Natives. Low cash income and high prices, even though supplemented by free health and educational services, and food-gathering activities, have resulted in exceedingly low standards of living for villagers: dilapidated housing, absence of sewer and water facilities, and electric power. State public assistance programs provide income to almost one of four households in villages; temporary relief programs provide income to about the same proportion, but usually for 3 months or less. Most village adults have less than an elementary school education, and large numbers have no formal education at all; for village adults speaking English, it is a second language. Nearly all Native communities have schools, but educational opportunity ends at the eighth grade in most places. Owing largely to socioeconomic conditions and the difficulty of providing health services to remote

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*Chapter VII, from *Alaska Natives and the Land,* Report of the Federal Field Committee for Development & Planning in Alaska, Anchorage, 1968.

villages, the health status of Alaska Natives is inferior to that of other Alaskans.

About one-fourth of Alaska's Natives are residents of predominantly non-Native communities where job opportunities exist. Because adult Natives are often less well educated than other adults and lack marketable skills, their rate of joblessness in these communities is higher than among other groups, and those who are jobholders are typically in lower-paying positions. Migrants from villages to urban areas are frequently ill equipped, by cultural as well as educational background, to make an easy transition to new patterns of life and work, but few communities have begun to provide assistance to them; and the consequences for too many are severe stresses resulting in alcohol problems and other personality disorders.

Alaska Natives are eligible for a wide range of Federal services offered by the Bureau of Indian Affairs and the Division of Indian Health of the Public Health Service, but such eligibility does not necessarily assure that a service will be afforded them owing to inadequate funding or the difficulty of providing such services. Although Alaska Natives may be employees of these agencies, and with increasing frequency are acting in an advisory way to them, they are not really involved in the planning and implementation of the programs.

Among Alaska Natives today there is an ever increasing ability as well as a desire to more fully participate in decisions affecting their lives. Fifty-eight villages are chartered under the Indian Reorganization Act and have constitutions, by-laws, and charters under which they may provide services and engage in business. Twenty of these places also are organized under State law as fourth, second or first class cities. Another 21 villages are organized only as cities under State law. The remaining villages are organized only on a traditional basis.

Most villages are affiliated with regional associations and with the statewide federation of Natives, and their delegates participate in deliberations and decisions of these organizations. There are today 14 such regional groups. In addition, there are seven Native organizations organized on a community basis in Anchorage, Fairbanks, and other places. It is through these organizations that protests to the transfer of lands by the Federal Government to others have been filed. They rely in their protests upon possessory rights earned by continuous aboriginal use of the land.

USE AND OWNERSHIP OF LANDS

Aboriginal Alaska Natives made use of all the biological resources of the land, interior and contiguous waters in general balance with its sustained human carrying capacity. This use was only limited in scope and amount by technology. In their use of the biological community for livelihood the Native people "occupied" the land in the sense of being on and over virtually all of it in pursuit of their subsistence, but they did not "occupy" the land in an agrarian or legal sense as understood in Anglo-American jurisprudence.

Native settlement patterns have been very substantially affected by natural physical and biological forces and, in more recent time, by the decisions and actions of church, government, and industry.

Such forces continue to influence settlement patterns today. Thirty-seven Native places existing in 1950 had declined to one or two families or had been abandoned by 1967, but 21 additional places had become established as villages by 1967. Eighty percent of the 178 villages are larger than they were in 1950.

Aboriginal group or "tribal" territoriality with definable bounds did exist in Alaska. Most Native groups also recognized individual and family or group "property rights"—particularly in the usufruct sense—to harvest the products of the land, and the amount of land used and occupied by peoples in Alaska to support their livelihood varied greatly in amount among ethnic groups dependent upon diverse environments. Such variety continues to be the pattern today. And while not all villages or villagers depend upon resources of the land and waters for subsistence to the same extent, reliance upon gathering activities is generally characteristic of most of the predominantly Native communities where about three-fourths of Alaska's Eskimos, Indians, and Aleuts live.

Alaska Natives who claim two-thirds of the State own in fee simple less than 500 acres and hold in restricted title only an additional 15,000 acres. Some 900 Native families share the use of 4 million acres of land in 23 reserves established for their use and administered by the Bureau of Indian Affairs. All other rural Native families live on the public domain. And reindeer reserves account for 1¼ million of the 4 million acres of reserved lands. Without Government permit, these reindeer lands may only be used for reindeer husbandry and subsistence purposes.

Specific land legislation passed for Alaska Natives—the Alaska Native Allotment Act of 1906 and the Townsite Act of 1926—has failed to meet the land needs of the Native people. In the 62 years since passage of the Native Allotment Act only slightly more than 15,000 acres of land have been deeded, by restricted deed, to 175 Native allottees. And in the 42 years since the passage of the Townsite Act, only 28 Native villages have been surveyed with deeds issued to their inhabitants; and title in fee simple to less than 500 acres has been conveyed.

Of the 272 million acres in the public domain, Natives claim 250 million acres; of the 85 million acres of land reserved by the Federal Government for specific purposes, they claim 75 million acres; of the 12 million acres thus far in process of selection by the State under the terms of the Statehood Act, they claim all but 100,000 acres; and of the 6 million acres already patented to the State or to private individuals, they claim 3 million acres.

Aboriginal possessory rights, based upon continuous aboriginal use, are valid against all but the sovereign—in this case the Federal Government—and are compensable rights once permission to bring an action for their loss is granted by the sovereign.

Any lands granted as compensation for rights in land lost must be from lands still within the control of the Federal Government; and although the State may elect to assist in the settlement by granting shares in future revenues to Alaska Natives, the claim for money compensation, like land compensation, is against the Federal Government.

Unappropriated lands presently under Federal control total over 250 million acres. But these lands are not uncommitted. On the contrary, in the Statehood Act for Alaska passed 10 years ago, the State was given the right to select nearly 103 million acres—and 85 million acres of this commitment remain to be selected. In addition to the public domain lands there are 85 million acres of federally withdrawn lands which the State sees as the source of grants under the settlement, or as a reimbursement to the State for other lands used in the settlement to which the State might be entitled. The legislative history of the Statehood Act reveals a strong statement of the willingness of Congress to reexamine Federal withdrawals in Alaska, and a detailed study is now being conducted by the Public Land Law Review Commission. Far-reaching decisions as to the merits of particular withdrawals may be left to congressional determination in the light of this study, with full awareness that as large acreage grants reduce the amount of desirable land available for State selection. the pressures to release existing Federal withdrawals will increase. However, adequate information on existing Federal withdrawals in Alaska is available to the Congress to make specific findings should they be required in the settlement of the claims.

National policy with respect to the public lands is one of multiple-use management which recognizes disposal under certain circumstances, access requirements for commercial development of resources, and the support of other national objectives. The withdrawal of lands for specific purposes has been the method of meeting some of those national objectives in the past. For example, Alaska is an area of military significance; and those lands presently withdrawn, or those lands to be withdrawn in the future for defense purposes, are particular sites to which top priority is to be assigned. Also, as the last and most extensive wilderness area in the United States and an area of unparalleled grandeur, the development of national wildlife ranges and refuges and national parks in Alaska is also of high priority. A broad range of public purposes is also met by the management of the two large national forests in the State.

Although some of the Federal withdrawals have the management of a particular resource as their purpose, other important resources of the State are located on, or under, the public domain, or lands or waters belonging to the State.

USE AND MANAGEMENT OF RESOURCES

Alaska's wildlife resources which are of national significance are afforded habitat preservation and management by the Federal Government. While Alaska Native populations depend in whole or in part upon biotic resources in order to sustain life and while many of Alaska's wildlife resources are of national significance, there is little conflict between the national wildlife objectives and Native subsistence requirements, with the possible exception of some migratory bird nesting populations. Increasing conflict between the sport or commercial harvest of wildlife resources and the subsistence harvest of these same resources by the Native people is, however, developing.

Legislative jurisdiction for all wildlife resources, except for migratory birds, is vested in the State of Alaska. On the other hand, proprietary jurisdiction of most of Alaska, the habitat of wildlife, is vested, at this point in time, primarily in the Federal Government which has the right to prescribe who, where, and in what manner persons may enter, travel across, and conduct activities upon land within its jurisdiction.

As in the case of wildlife resources, the Native "property right" in the fishery resource was "taken" when legislative jurisdiction over fish and wildlife resources passed to the State by virtue of the Statehood Act. Alaska's Native people rely heavily upon the fisheries, but they share in these resources only as members of the general public.

The fishery resource is a natural resource which offers immediate direct promise for major economic participation; one in which Natives can compete as wage earners with moderate outlays of capital. It is a renewable resource with which Natives are familiar.

The general development and allocation of Alaska water resources is essential to economic growth and community welfare in Alaska. Furthermore, Alaska is a region of water surplus and is considered as a future potential continental water source for water-deficient areas in the Western United States and Canada. While the largest possible use for Alaska water resources is hydroelectric power development, this, with the exception of a few sites, does not exhibit favorable cost-benefit ratios. The Federal withdrawal of many hydroelectric powersites which have no foreseeable reservoir areas, however, prevents a conflict with potential landownership to many Native groups and villages.

Many Alaska aboriginal groups recognized a "user right" to individuals or families for a net, wire, or other fish-catching place on a river or lake; no such exclusive "right" now exists on navigable waters because the Statehood Act extinguished any personal proprietorship and vested general ownership of lands beneath navigable waters in the State.

There is need to provide watershed protection to water source supplies for Alaska's cities, towns, and villages. Depending upon location and physiography, community watersheds may have to be of considerable size in order to provide for safe and adequate supplies in the future. There is need also to provide land for public flood plain zoning in many regions of Alaska as economic and community growth increases.

Alaska possesses 16 percent of all U.S. forest resources. Nearly all forest resources of Alaska are subject to Federal jurisdiction. The important commercial forests of the coastal zone are administered by the U.S. Forest Service within the Chugach and Tongass National Forests. Interior forests on the public domain, comprising 32 percent of the total land area of Alaska, 21 percent of which is commercial timber, are administered by the Bureau of Land Management. These interior forests are subject to State selection and also offer a possible resource to Native claimants.

Almost all available cropland in Alaska has been selected by the state or patented to private interests. The undeveloped agricultural resource significant to Native claimants and non-Natives alike, however, is grazing land—particularly on the Alaska Peninsula, Kodiak Island, and the Aleutian Islands. With improved transportation and changing economic feasibility, livestock production (cattle and sheep) is a potential expandable use for the grasslands of western

Alaska. However, conflict with wildlife use of the same lands is probable; and at the present time, wildlife is the more economically valuable resource. A particularly important grazing land use occurs on lands of the Seward Peninsula, St. Lawrence Island, and Nunivak Island and a few other small areas of western Alaska where Native reindeer husbandry is practiced.

Although present areas of intensive recreational use cover less than one-sixth of Alaska—chiefly in areas adjoining the major communities—the recreational resources of the State are one of the most potentially valuable economic assets of the Nation, State, and Natives in the years ahead. Estimates are that by 1980 nearly three-quarters of a million tourists will have visited Alaska, adding thereby $225 million to the Alaskan economy in the 15 years following 1964.

The potential wealth of Alaska mineral and oil and gas resources is not known, although it is estimated to be many billions of dollars. So little of the State's geology is understood—many regions of the State being virtually unexplored—that it is impossible to pattern a rational distribution of land based upon mineral wealth. Nevertheless, sufficient knowledge exists to say that geologic distribution of known deposits is extremely unequal and variable.

Elements of the Settlement

The major elements of settlement available for a solution of the problems presented by Alaska Native land claims can be treated in three broad categories:

(1) The grant or protection of lands and land rights now used by Alaska Natives for townsites, hunting and fishing camps, and subsistence hunting, fishing, and other food and fuel gathering areas;

(2) The provision of compensation, either in lands or revenues, for those possessory rights to land taken in the past or to be taken as a result of this legislation; and

(3) The establishment of organizations for the management and administration of lands and revenues and the adjudication of conflict.

LAND FOR USE

Village sites and camp sites

That is the expressed policy of the Nation to protect the Alaska Native people in their present occupancy of lands is stated in the President's message to Congress of March 6, 1968, in which specific attention was paid to Alaska Native land claims and in Senate Concurrent Resolution 11, passed by the Senate of the 90th Congress on September 12, 1968, pledging support for policies which meet the moral and legal obligations of the Nation toward American Indians and Alaska Natives—specifically in the protection of their lands.

No economic ill-effect or detriment to public land management can be seen in the granting of village sites. On the contrary, villagers can anticipate real economic gains; and Government will be relieved of a burdensome and expensive managerial responsibility.

Even under the most strict interpretation of possessory rights, there is no alternative to the granting of title to village sites and fishing and hunting camps.

Most of the proposals before Congress contemplate transfers of village sites to villages with subsequent transfers of parcels to individuals. Because townsite surveying is a time-consuming process, it is desirable that the Secretary of the Interior withdraw land by projected least civil divisions. A minimum of one township for each existing village is necessary to protect such lands as are used and as may be needed for expansion until the internal townsite surveys can be completed. Once townsite surveys are completed, the Department would transfer the parcels to the individuals occupying them; and the remaining lots would be transferred to the village government.

The transfer of township units for villages, either separate or in close juxtaposition, is desirable to provide room for relocation due to natural problems that arise affecting village location. Where villages are in close proximity, the number of villages times the township unit could be the total amount surrounding the entire group of villages. For example, in the Bethel area where there are nine villages in close proximity, the grant of a minimum of nine townships for village sites would be desirable. Such grants would total a little more than 4 million acres for all presently existing villages. Finally, so that individual land ownership not be too long delayed, legislation should include funding and authorization for an acceleration of the current program of townsite surveys.

Grants of fishing, hunting, and food-gathering sites may be made to individuals now using them or to Native groups for later transfer to the individuals in possession. Since agencies do not have knowledge of the locations of all such camps nor their users, the most practical approach is to have Government teams meet with villages in the field to obtain applications from villagers for the sites they use. Even residents of the largest villages continue to use historic sites for hunting, fishing, and trapping—sometimes for longer periods than they reside in what may be called their home villages.

Congress might impose a maximum number of subsistence-use sites and a maximum acreage that might be embraced by all applications from each head of a household or other adult, but in so doing it should be remembered that the number of subsistence sites required for each family in their subsistence quest varies throughout the State.

While the 160-acre limitation of the Alaska Native Allotment Act might be adequate, the limitation to only four parcels would not cover the number of sites now in use by many families. Because identification and transfer of these subsistence-use sites might take as long as 5 years, written nominations of land by villages to cover these uses should be the cause for immediate withdrawals by the Secretary to protect such sites until village hearings and formal applications are received. It is estimated that about 1.5 million acres would meet minimum needs for these sites.

While it is doubtful that a case can be made against granting of village or subsistence use sites on most Federal withdrawals, the location of some villages in Alaska's two national forests does raise a question. Of the Native villages in the forests, only two remain unsurveyed; and surveys there and subsequent grant of titles should be promptly made. The question is: Would the allocation of lands for hunting and fishing camps in the national forests unduly affect public managerial responsibilities of the Forest Service, not only for timber harvest, but also for watershed protection, wildlife management, and recreational purposes? If the answer to this question favors the allocation of hunting and fishing sites in the forests, a second question is whether such grants should be made to villagers in southeast Alaska where lands included in the Tongass National Forest have been included in the Tlingit-Haida judgment. Despite the judgment, Congress might take the opportunity to treat all groups equitably by transferring lands, which the court of claims could not do, and granting subsistence sites to the Natives of southeastern Alaska.

Since there may be several hundred Alaska Natives who live outside of Native villages and who are living on public lands, the legislation also might provide for confirmation of title to lands in their possession. Complicated procedures followed under the Alaska Native Allotment Act have resulted in virtually no Native allotments being issued in present rural areas. So, if the act is considered as a means of granting title to these rural nonvillagers, amendment to simplify procedures may be necessary.

Lands for subsistence use

There is no dispute that the right of Alaska Natives to go upon Federal lands for the purpose of taking fish and game should continue. Although all of the proposals before the Congress provide for the granting of the right, the authority to regulate the taking of fish and game on all but certain federally withdrawn lands belongs to the State of Alaska.

Even the grant of surface title to lands used for subsistence purposes would not eliminate the authority of the State to regulate the taking of fish and game on those lands. It would, however, enable the owners of the land to prohibit the entry of sportsmen or commercial interests for the harvest of fish and game as well as non-Native subsistence use. Should the granting of surface title be the means of assuring the Natives use of the lands for subsistence, it would require a grant in varying amounts according to geographic location and biotic carrying capacity, totaling at least 60 million acres.

Although the Federal Government cannot regulate the taking of fish and game, and the State under the terms of its Constitution cannot grant exclusive hunting and fishing rights, Congress in effect could grant exclusive hunting and fishing rights by granting an easement to Natives only to enter the public domain for these purposes. Present proposals enable the Secretary of the Interior to grant such exclusive easements as a discretionary power. While a grant of exclusive easements across all public lands would not be wise public policy, because it would undermine the pattern of subsistence use by non-Natives, limit recreational attractions of the State, and encourage racial divisiveness, permitting the Secretary to protect threatened subsistence resources by this technique is probably good policy.

An alternative means of protecting subsistence resources is to grant exclusive rights to go upon the public lands within certain well-defined ranges adjacent to particular villages to the occupants of those villages—Natives or non-Natives. If there is doubt that entrance to subsistence use areas of Alaska may be unduly limited by disposal of the lands before subsistence uses cease, it would be possible to provide for such access on a nonexclusive basis as a condition of transfers of the land from Federal ownership.

Generally, the State's management of fish and wildlife resources is excellent. However, there are important instances of conflict of Native subsistence needs, recreational needs, and commercial exploitation of fish and game. The Congress may well wish to secure the definitive position of the State relative to its approach to the management of these resources in conflict.

The granting of lands for village sites, camp sites, and subsistence use—or the protection of subsistence use by other means—will resolve the uncertainty of right to land and protect the present livelihood of Alaska Natives. Other grants of land, particularly those which include subsurface rights, may be considered a form of compensation for aboriginal rights lost. In addition, they may be the means by which Alaska Natives participate in the future economic growth of Alaska.

COMPENSATION

Compensable claims by Alaska Natives are based upon past withdrawals by the Federal Government and upon the failure of Government to protect them in the possession of their aboriginal lands from the takings of others. Similar claims have been honored for other American aborigines by the Congress and by the courts. The additional dimension of the Alaska Native land claims is that a settlement itself—by exchanging some lands for others and some land rights for others—may constitute the greatest taking of all.

When all compensable takings are considered, the problems of determining compensation are twofold: to determine the amount of compensation based upon the amount of land rights taken, the time of taking, and their market value at that time; and to determine the form and distribution of the compensation.

Amount of compensation

This basic determination may be made by decisions in two broad categories:

(1) *Time of taking.*—The dates of lands lost by specific federal withdrawals can be determined with accuracy as can the dates of lands lost by State selection. The loss of usufruct hunting and fishing rights, as well as the loss of rights in any tideland and inland waters, can be tied to the date of statehood. The loss of other claimed lands not confirmed in Native ownership can be said to have been taken on the date and by the terms of this settlement.

(2) *Market value.*—Market value of lands at the time of the Federal withdrawals, at the time of statehood, and at present can be broadly determined. Although merely a possessory right of use and occupancy, it is recognized that the market value of the "Indian title," under which Alaska Natives claim, is to be computed as though the lands were owned in fee. Thus, the market value of the land would include the value of its known mineral content although not its speculative value. Each year of delay, as the resources of Alaska are developed, results in increased land values for which compensation is sought.

Form of compensation

Money, in installments, or a lump sum, is not the sole form of compensation. Land, and interests in land, as well as participation in future revenues from land or resources may also be used alone or in combination with other compensation forms.

(1) *Grants of land as compensation*

Proposals before the Congress provide for confirming title of both surface and mineral estates of the presently existing reserves together with land grants to other Native groups. Total proposed grants for use and compensation range from no more than 20 million acres in the bill presented by the Department of the Interior to no less than 40 million acres in the bill presented by the Alaska Federation of Natives. But, as previously stated, if grants to meet subsistence needs are to be made which recognize varied subsistence ratios between people and acres of land, then a minimum of 60 million acres would be required. If land grant provisions of the settlement are computed in terms of a static, acre-per-person formula, this crucial question is overlooked. The question is not how much land per capita but rather how much land in relationship to the number of people the land will support. Similarly, if grants are to be made to provide a future economic base for Native groups, then a computation in terms of acres per person overlooks regional variation in resource endowment.

Accenting this problem are proposals calling for enrollment procedures which allow Natives away from their own villages, even in urban places, to elect enrollment in a village in which they no longer live, indeed in a village which no longer exists. Enrollments of urban Natives that inflate village populations would appear to serve no good end for the urban Native unless enormous mineral wealth exists in the land and a share is distributed to him. Enrollment of persons at now abandoned village sites or at other places they were born, such as summer fish camps, would have the unfortunate consequence of increasing the number of villages to which grants would be made, and if resettlement occurred, to which public services would have to be extended. It is conceivable, based upon the historic record that 200 to 400 old village sites could be reoccupied thereby tripling the number of rural Native places in Alaska.

Given the conflicts and complexities of grants of land as compensation a decision to make such grants should be accompanied by a consideration of making the grants to groups of villages or regional associations.

Land grants for compensation in excess of confirmation of title to village and subsistence-use sites, should be made only with recognition of intervening public and private purposes and recognition of the likely consequences of such grants.

Intervening public and private purposes include:

(a) *Lands within Federal withdrawals.*—It is likely that some of the 85 million acres now federally withdrawn may be released following review by the Public Land Law Review Commission of Federal land policy in Alaska, but at this time—unless Congress acts respecting those withdrawals—they are unavailable to the settlement.

(b) *Lands subject to State selection.*—If the State should choose only one-half the acreage to which it is entitled under the Statehood Act, its selections, if given priority, would inevitably remove most of the best lands that might otherwise go to native claimants. The 18 million acres selected thus far have already encompassed many village and subsistence-use sites, particularly those of the Tanana and Tanaina Indians of the Fairbanks and Cook Inlet regions, respectively.

(c) *Lands open to public uses.*—Finally, increasing demands of American citizens generally for outdoor recreation focus attention upon the wilderness of Alaska.

Another problem whose dimensions are not fully known is that grants as small as 50,000 acres per village would pose numerous conflicts, particularly in southwest Alaska, as to what lands would go to one of several villages in close proximity.

Great disparities appear when proposals to grant 50,000 acres, or a township, or the multiple of 500 acres per person are compared with the confirmation of title to a reserve such as the Chandalar Native Reserve of over 1 million acres. Although the most recent proposal supports grants of title to all existing reserves, earlier proposals provide for such grants only to villages organized under the Indian Reorganization Act.

Given the variations in size of Alaska Native reserves, the addition of mineral title commensurate with surface boundaries only increases inequities. It should be noted, however, that any decision against conveying mineral rights in lands granted, if existing reserves are included, would result in the loss of the only mineral rights now producing revenues for Alaska Natives—those revenues accruing to the villagers of Tyonek on the Moquawkie Reserve.

A reasonable alternative to denying or granting mineral rights in all land conveyed across the board might be one which gives the option to Native groups of accepting the mineral rights in the lands conveyed them or in sharing pro rata in future revenues from a general acreage.

Another possible consequence of granting land as compensation to Alaska Natives may be that the compensation realized will be empty of real meaning for their future. While such grants would give the fullest protection to present subsistence use, in some areas the scarcity of commercial resources would promise little prospect for modern economic growth, would provide a disincentive to move to areas of economic activity, and, in all likelihood, would diminish the amount and kind of compensation that might otherwise be awarded.

Alaska is now a viable, dynamic frontier. Its society is integrated in the best sense of that word. Should grants of blocks of land result in the kind of isolation experienced by some American Indian groups on reservations, tragic social and economic consequences to Nation, State and Alaska Natives could be expected to follow.

There are other methods of awarding compensation in the form of estates in land aside from granting lands that surround village townsite grants.

(2) *Percentage of future revenues*

One alternative is the granting of a percentage of the revenues derived from public lands. As Alaska prospers because of the wealth of its now largely undeveloped resources, the Natives of Alaska desire to share in that prosperity.

A grant of a percentage of future revenues has the advantage of retaining management of the lands in Government and avoiding the socioeconomic problems usually associated with reservations *qua* reservations.

Such revenue sharing has a precedent in State action affecting the claims. While the 5-percent grant of revenues from State lands to be selected in the future is not being made owing to its being conditioned upon a lifting of the "land freeze," it does indicate the State's willingness to consider revenue sharing.

The concept also has ample precedent in other Federal legislation. For example:

> Ninety percent of the revenues from leasable minerals on Federal lands go to the State;
>
> Twenty-five percent of the revenues from the sale of surface resources on the national forests and national wildlife refuges go to the State or its boroughs;
>
> Seventy percent of revenues from the Pribilof Islands fur seal harvest go to the State; and
>
> Five percent of surface resource and land sales from the public domain go to the State.

In considering the grant of a share in future revenues, the question is not only the amount of the percentage of revenues but also from whose present share of revenues—the State or Federal Government—the percentage is to be taken.

Other alternative forms of participation in future revenues include:

> (*a*) Assigning revenues from mineral estates, if such estates in land are granted, on a pro rata basis to all the Natives of Alaska; this alternative would avoid the creation of "have" and "have not" villages;
>
> (*b*) Assigning a percentage of mineral revenues from a particular source such as the Outer Continental Shelf; and
>
> (*c*) Earmarking of a specified percentage of revenues from national forests, fish and wildlife lands, and the public domain by amending existing formulas for sharing of such revenues.

(3) *Revenues from specific lands*

An alternative form of granting land as compensation might be designation of township units on a checkerboard basis as "Native lands" and the granting of revenues realized from the sale or lease of such lands and their resources to Alaska Natives. Management and control of the lands might remain in the Federal or State government.

(4) *Land grants to towns and boroughs*

Not all of the Natives of Alaska live in rural villages. One-fourth of them live in towns and cities having populations of more than 1,000. Although their need for land may be less and different from the need for land of the rural Natives, land also may be used as a portion of the settlement for nonrural Natives.

Based upon the resident Native population of a town or village, or of an organized borough, grants of land to the governing body of the town or borough could be used for transfer to Natives of the community upon application by them, much as a veterans' preference is given in other laws. This might further facilitate grants of land for community expansion contemplated in the Statehood Act but which have not come to pass. After a designated time any lands remaining might be retained by the community for any public purpose.

(5) *Grants of money as compensation*

The most flexible form of compensation which may be used to meet the need and satisfy the claims of rural and urban Natives alike is money. Questions raised on money compensation are the method of payment and its distribution. It may be paid in lump sum or installments over a period of time. It may be distributed to individuals, Native villages or groups, or regional or statewide organizations.

Present proposals call for installment payments. However, Congress may make a lump sum payment after determination of the budgetary limitations of the Federal Government and examination of the question of whether a lump sum payment would be in the best interests of the Native people. Given the pressures on the Federal Government at the moment, it is doubtful that adequate compensation can be achieved for Native rights lost by lump sum payment. The more important question than the method of payment is to whom payments are to be made.

Beneficiaries of compensation

Essential to the determination of how compensation is to be distributed is a determination of its beneficiaries.

All Alaska Natives in Alaska and other places, with but few exceptions, are slated to be beneficiaries of proposed legislation. Alaska Natives are descendants of Tlingit-Haida Indians of southeast Alaska, the Athapascans of the interior, and the Eskimos and Aleuts whose ancestors established aboriginal claim to Alaska before the purchase from Russia. Many have intermarried with non-Natives, and two principal Federal agencies providing services to Alaska Natives—the Bureau of Indian Affairs and the Public Health Service—afford such services to persons who claim to be one-quarter or more Eskimo, Indian, or Aleut. Most legislative proposals follow this definition, but one also defines a Native as one who is so regarded. Because of the difficulty of establishing blood quantum, the latter approach is probably preferable because it will allow government to deal with the Natives of Alaska on the basis of need as well as right.

Excluded from a share in compensation until the $7.5 million judgment granted them by the Court of Claims has been matched by their proportionate part of this settlement are the Tlingit-Haidas. The Tlingit-Haidas judgment is for lands taken before 1935. They also have claims pending before the Indian Claims Commission for other lands taken between 1935 and 1946. As a consequence of the land settlement, a fair compensation for these lands should be computed as a part of this settlement, and the Tlingit-Haidas should be allowed to share in that portion of the compensation without offset of the Court of Claims judgment. In addition, if equity of treatment of all aboriginal groups of Alaska is to be the rule of the Congress, there is another consideration. Indian title was confirmed by the Court of Claims in the Tlingit-Haidas of 2.6 million acres of land in southeastern Alaska which has not yet been taken. If these lands are taken as a part of the land claim settlement, compensation for them also should be a part of the settlement in which Tlingit-Haidas would share.

Not excluded from present proposals are the beneficiaries of substantial revenues, the Tanaina Natives of the village of Tyonek. Oil and gas bonuses and royalties paid them for lease of their present reserve have totaled $15 million. Whether their case warrants special treatment in the legislation is a matter for determination.

A problem area is in the matter of claims pending before the Indian Claims Commission. The sense of current land claim settlement proposals is to require the dismissal of these claims. Since decisions by Native groups themselves are to be preferred, the option should be given them to pursue their claims before the Indian Claims Commission or take under the terms of the general land claims settlement. Not all of the Alaska claims pending before the Indian Claims Commission are for possessory land rights lost. Some of them are for other damages to lives and property.

A final subject for consideration here is compensation for urban Natives. Keeping in mind that increasing numbers of Natives are moving into urban areas, that problems confronting them are often different from those of villagers and that they may not be declared as sharers in land grants made to villages and villagers, Congress may well want to give particular attention to the problems of these Natives in economic and social transition. A deficiency in all legislation thus far proposed is the lack of specific provisions to meet needs of urban Natives. Often undereducated, jobless, or in low-paying jobs, and sometimes culturally ill equipped for city life, they need, among other things, increased opportunities for education and training, extensive supportive services, and the ability to obtain housing so that they do not find themselves in ghettos. Congress might award compensation that would result in a program that would, for instance, embrace the establishment of acculturation and training centers and provide for low-interest mortgage money for housing and small business enterprises.

As computation of land grants on acres-per-person ratios may not recognize variations in needs and resources, a similar mathematical computation of money compensation on a per capita basis may not recognize urban-rural, reserve-no reserve, and other disparities.

Settlement provisions concerning the distribution of compensation and its use may provide the opportunity to resolve inequities as well as assure the realization of maximum benefits from the compensation granted.

Distribution and uses of compensation

Immediate beneficiaries of compensation awarded might be individuals, villages or other groups, regional groups or associations, or a statewide organization. All of these have been proposed in varying combinations in pending legislation. Closely related to these issues is the matter of whether, or to what extent, Congress should determine to what uses compensation could be put.

Although the ultimate beneficiaries of compensation are individuals, making them immediate recipients of per capita payments is also a possibility. Such funds would enable recipients to purchase equipment so they might compete more effectively in the harvest of resources for commercial and subsistence use, enable them to improve their dwellings, and purchase clothing for children and provide other family necessities. Although Congress has usually ruled out the use of *all* funds received in land claim settlements for per capita grants, the poverty and enormous unmet needs of Alaska Natives argue for settling at least a portion of the compensation immediately upon them as individuals.

Distribution of funds to villages is suggested because most villages lack community facilities—sewer and water, electricity, community centers, fire protection, police protection—and all the other facilities and services which most Americans take for granted. While only 29 villages presently levy taxes and spend the funds as communities, village councils are increasingly playing responsible roles in seeking community planning and improvements. Unless grants of land or money to villages were of substantial size, however, single villages would be unable to employ professional consultants to plan for and capitalize community improvements.

In order to realize the fullest benefits of grants intended for village advancement, compensation might be awarded to groups of villages formed for this purpose. The granting of compensation to groups of villages would also enable them, in some areas, to invest in or capitalize commercial resource development and to provide local jobs and a sustained economic base. Groups of urban Natives could likewise use funds awarded to help meet their many needs.

Compensation awarded a State organization of Eskimos, Indians, and Aleuts would enable it to employ skilled professionals who could be assigned to assist regional groups or villages in planning and implementation of projects and programs for general economic betterment and provide a more powerful voice for Alaska Natives. The question before the Congress might be whether it should grant compensation directly to a statewide organization or whether the decision to support such an organization should be left to regional groups or villages obtaining compensation under the act.

Although no bills before the Congress at the present time describe the uses to which compensation must be put, Congress may wish to earmark parts of the settlement for specific purposes. For instance, since present funds made available from the Congress for post-high school education always fall short of meeting the increasing needs of Alaska Natives, an educational scholarship fund might be established. Such a fund might be used, not only for college students, but for high schoolers who are unable to attend secondary schools appropriate to their needs and wants and for high school graduates who wish to attend trade schools or college preparatory schools. In none of these areas is Government now providing adequate opportunity for Alaska Natives.

Earmarking by Congress should be done only with an awareness that it is substituting its judgment for the judgment of a group of people whose rights are being compensated for and whose ability at decision making is increasingly responsible. Because Government cannot know fully all the needs, wants and aspirations of any group of people, particularly those with a different cultural heritage, Government must allow—indeed, encourage—them to be active shapers of their own future.

While present Native organizations have addressed themselves to important policy questions, they have, for the most part, not possessed budgets that would permit a wide scope of action. Two Eskimo associations in the west, however, are expected to receive a Federal grant for local economic development efforts; and the Alaska Federation of Natives has a staff of seven for a number of programs. The federation is administrator of nearly a third of a million dollar grant from the Department of Labor for the contracting of on-the-job training for 200 persons. It is also the recipient of a Foundation grant that is to be used to conduct education and training courses for village leaders.

There are many on-going programs of health, education, and welfare designed for the benefit of the Alaska Native which will not be reduced in any way by the settlement of the land claims. They may be supplemented and made more effective by the settlement, however; and the settlement will contribute to the improvement of Native circumstance and life so as to better equip them to fully share in the design and implementation of these programs.

The transition away from dependence upon special programs to full control over their own affairs is desirable. Proposals before Congress endorsed by Alaska Natives indicate they wish the path to be carefully charted in legislation rather than left to future determination by government. To devise adequate organizations and machinery to accomplish this objective is no small task.

ORGANIZATION

Three organizational functions to be considered are adjudication, administration, and management of lands and revenues. While these elements are always of importance, they are of especial importance in the proposed land claims settlement in order that the land claims settlement is not simply compensation for rights taken, but that it also makes a maximum contribution to the solution of the economic problems of Native peoples. So that the settlement bill becomes the vehicle for giving Alaska Natives an opportunity to live in full social and economic equality with other Alaskans, decisions affecting these functions become of even greater significance.

Adjudication

Many determinations which are necessary cannot be made in any proposed legislative settlement, but will have to be adjudicated by an organization designated in the legislation: the determination of eligibility of beneficiaries and the resolution of conflict between beneficiaries such as between individuals for specific hunting and fishing sites, between villages as to the bounds of village territory, and between ethnic groups as to broader territorial boundaries. If a grant of village lands were to be based on a formula of acreage per person, rather than historic use and occupancy or present need, it would give rise to a number of conflicts requiring adjudication.

The task of adjudication might be assigned to a group within the Department of the Interior, or it might be assigned to an independent commission. Both alternatives are contained in pending proposals. Of the two, an independent commission is more desirable. Due to real and imagined conflicts, the commission should not be located within the Department of the Interior since adjudication, by its very nature, requires an independence from existing institutions, particularly those that have an historic relation with the land and the people involved. Similarly, proposals which require the appointment of Alaska Natives to such a commission violate the proposition that an adjudicatory body be composed of persons without vested interests in the problem at hand. Appointments of Natives to such a commission should be neither required nor prohibited. The main office of the commission and its staff should be in Alaska. Finally, the quasi-judicial process thus established will require authority for final judicial review in the courts.

Administration

The principal administrative functions of surveying and conveying granted lands, transmitting appropriated funds, and establishing procedures for the crediting of apportioned revenues are functions now exercised by the Department of the Interior as a part of its charge to administer the public lands of the United States. These tasks, such as determining the location of village sites, hunting and fishing camp sites, and individual town lots, and the identification of Federal withdrawals or other land boundaries, are an area of expertise associated with the Bureau of Land Management. It has the technical knowledge and skilled personnel to perform the work efficiently and at a minimum cost to the Government. It is proper that this Department exercise this function with regard to any Alaska Native land claim settlement. Unlike revenues accruing from public lands which would be administered by the Bureau of Land Management, appropriations for lump sum or installment compensation could be handled directly by the Treasury Department.

Another important administrative function is that of enrollment of beneficiaries. Two alternatives for the conduct of this administrative duty are the Bureau of Indian Affairs in the Department of the Interior, and the Bureau of the Census in the Department of Commerce. No agency has fuller specific knowledge of Alaska Natives, by name and location in Alaska in 1968 than the Bureau of Indian Affairs, but the Bureau has little knowledge of Alaska Natives who have moved to other States. The coincidence of timing in this land claim settlement will probably result, however, in the Bureau of the Census having the fullest specific knowledge of Alaska Natives by name in Alaska and in other States, by the end of 1970, particularly if this task of enrollment is assigned to the Bureau of the Census as it carries out its decennial census.

Management of assets granted

The grant of assets to Native beneficiaries will require management of land and money, including the distribution of funds, capital investment, planning and project development, and reporting and auditing.

There are two basic approaches: one grants assets to beneficiaries directly and relies upon their management of their assets; the second grants assets in trust to the Secretary of the Interior for the benefit of Alaska Natives. One seeks to protect Native assets by adding another layer of decision making; the other seeks to assign full and final responsibility to the beneficiaries for the management of their assets. While the Native leadership prefers the management responsibility to be given to the people rather than to the Department of the Interior, they are also fully cognizant of the varying abilities of villages to make final management decisions respecting large expenditures of money.

Native leaders, in legislative proposals, have advocated organizations of beneficiaries for the management of assets at three levels: at the village level; in regional associations; and in a Statewide organization. They recognize that some villages have the expertise to accomplish community betterments as well as make capital investments while others do not. Further, Native leaders believe that all villages are capable of an appraisal of their own abilities, and their proposals rely upon the villages themselves to decide whether or not to invest their money in local businesses and local improvements, or to seek assistance and advice from broader regional and Statewide organizations.

One aspect of the latest legislative proposal with regard to organizations of beneficiaries offers some difficulty in that limitation is placed upon the number of associations. Additional testimony from Native groups may help determine those existing Native groups or associations to be recognized as the overall beneficiaries for their member participants. Some isolated villages, such as Inalik on Little Diomede Island, or Anaktuvuk Pass, may prefer to act independently.

Although a trust arrangement is not supported by the Native leadership, it appears they do wish the Congress to spell out the mechanisms of corporate or organizational structure for asset management which will protect both their own and the public interest.

Involved in the decisions respecting organizations for the management of assets is a search for a balanced approach which encourages independence and responsibility, but at the same time, prevents exploitation. If the perfect balance cannot be struck, it is preferable that the imbalance be in favor of Native management of their own assets and determination of their own destiny.

Auditing and reporting, as well as other functions of administration of a settlement are analyzed in the supplement to "Alaska Natives and the Land" which compares specific provisions of legislative proposals for the settlement of the claims.

A CONCLUDING NOTE

It is recognized that this framework cannot respond fully to the whole range of complex questions confronting the Congress. It is hoped, however, that it succeeds in providing a useful perspective and assists in identifying key issues and considerations for future hearings and deliberations of the Congress in its resolution of the claims to land of Alaska Eskimo, Indian, and Aleut people.

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